

October 10, 2005

Re: RFQ Announcement for Prequalification of
Energy Performance Contracting Services
Project No. O0410-02

Dear Potential Responder:

The Facilities Management, Design and Construction Division invites proposals from interested Energy Services Companies (ESCO's) and other Design Professionals to conduct a technical energy audit and implement energy performance contracts for various state facilities. The ESCO will identify and implement capital improvement projects to reduce energy use and related costs in facilities, such that annual cost savings are applied to annual payments for improvements. Services may include but are not limited to: technical energy audit, engineering design, equipment procurement, construction management, financing, commissioning, staff training, monitoring and verification.

If your firm is interested in receiving the RFQ, please complete the attached "RFQ Request" form. A mandatory meeting will be held in the Truman State Office Building on November 1, 2005. The attached "Site Visit Registration" form must also be completed. Both the "RFQ Request" form and the "Site Visit Registration" must be received by 5:00 p.m., October 25, 2005.

A copy of the RFQ may be viewed on the Internet at: <http://www.oa.mo.gov/fmdc/>

Please be assured, should you elect not to respond to this request, you will not be precluded from being considered for future work with our Division.

Any questions concerning these projects should be directed to the Project Manager, Steve Robertson, by phone at 573-526-4968 or by e-mail at Steve.Robertson@oa.mo.gov

We look forward to hearing from you.

Attachments:

RFQ Request Fax-Back Form
Meeting Registration Fax-Back Form

FAX TO: 573-751-7277
ATTENTION: Steve Robertson

RFQ REQUEST Fax-Back Form

Energy Performance Contracting Services for
Various Facilities
Statewide -- Missouri
Project No. 00410-02

____ Yes, I am interested in receiving a copy of the RFQ for Energy Performance Contracting Services.

Today's Date: _____

Name: _____

Company Name: _____

Mailing Address:

(city) (state) (zip)

Phone: _____

Fax: _____

E-mail Address: _____

____ Yes, I would like an electronic copy of the ESCO Response section e-mailed to me.

Note: The RFQ, including the ESCO Response section, is available on the internet at: <http://www.oa.mo.gov/fmdc/>

FAX TO: 573-751-7277
ATTENTION: Steve Robertson

MEETING REGISTRATION
Energy Performance Contracting Services for
Various Facilities
Statewide -- Missouri
Project No. 00410-02

The Division of Facilities Management, Design and Construction invites you to attend an informational meeting prior to responding to the RFQ for Energy Performance Contracting Services. This meeting is mandatory. No proposal will be accepted from an ESCO who did not have a representative at the meeting.

DATE: November 1, 2005

TIME: 10:00 AM

LOCATION:

Room 750

Truman State Office Building

301 West High Street

Jefferson City, MO 65102

All ESCO's will meet at the same time so that all respondents will hear the same questions, comments and answers. **NO FOLLOW-UP MEETINGS OR ALTERNATIVE DATES FOR MEETINGS WILL BE ALLOWED UNLESS OFFERED TO ALL RESPONDENTS.**

_____ **Yes, I plan to attend the meeting.**

Today's Date: _____

Name: _____

Company Name: _____

Mailing Address: _____

Phone: _____ **Fax:** _____

E-mail Address: _____

Request for Qualifications for:

**Prequalification of
Energy Performance Contracting Services
Project No. O0410-02**

For

The State of Missouri
Office of Administration
Facilities Management, Design and Construction Division

October 10, 2005

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RFQ for Energy Performance Contracting Services

REQUEST FOR QUALIFICATIONS for Energy Performance Contracting Services for Various Facilities Statewide -- Missouri Project No. 00410-02

INTRODUCTION

The State of Missouri, represented by the Office of Administration, Facilities Management, Design and Construction Division (hereinafter referred to as *Owner*) seeks proposals from interested Energy Services Companies (ESCO's) to conduct a technical energy audit of facilities and implement an Energy Performance Contract, in order to identify and implement capital improvements to reduce energy use and related costs in facilities such that annual cost savings are applied to annual payments for improvements.

OVERVIEW

Owner seeks to maximize energy cost savings and related costs in order to pay for facility upgrades and services.

Services and capital improvements will be financed through an energy performance contract which:

- incurs no initial capital costs
- achieves significant long-term cost savings
- achieves a guarantee of cost savings (with Owner option to eliminate part or all of the measurement and verification for the guarantee)
- maintains consistent and reasonable levels of occupant comfort
- maintains consistent levels of building functionality
- captures additional benefits that may directly result from energy-related services and capital improvements, improved occupant comfort, reduced maintenance needs, improved indoor air quality, additional building improvements, etc

The RFQ and contracting process has four phases:

- RFQ Phase: Through this RFQ, multiple ESCO's will be selected based on written qualifications. These qualifications will be used as the basis of selection for future projects throughout the State.
- Audit and Project Development Phase: A Technical Energy Audit and Project Development Contract will be developed with the selected ESCO to define the project scope, cost and financial terms.
- Financing/Construction/Implementation Phase: Upon satisfactory results of the Technical Energy Audit, an Energy Performance Contract will be developed to implement the negotiated and recommended projects.
- Commissioning/Guarantee/Monitoring Phase: Upon completion of construction, the ESCO may offer a variety of services to ensure savings are met, such as a savings guarantee, staff training, follow-up monitoring, and contract maintenance services.

RFQ for Energy Performance Contracting Services

Statement of Work

ESCO Services

ESCO must have the demonstrated capability in engineering and management to provide a broad range of services. Services may include -- but are not limited to -- the following:

Audit and Project Development Phase

- technical energy audit to evaluate costs and savings of a variety of energy-saving measures
- project development plan including financial analysis

Financing/Construction/Implementation/ Phase

- financing capability
- design services
- equipment procurement and purchasing
- construction management

Commissioning/Guarantee/Monitoring Phase

- commissioning
- continuing operations and maintenance for all improvements
- staff training on routine maintenance and operation of systems
- training of building operations personnel
- performance and cost guarantee of savings
- monitoring and verification for measurement and reporting of the performance and savings from improvements

ESCO must have the technical capability to address a broad range of systems including, but not limited to:

- Mechanical Systems. Heating, ventilating and air conditioning (HVAC) systems, energy management and control systems, domestic hot water systems, distribution systems, etc.
- Plants. Distribution systems, cogeneration systems, etc.
- Lighting systems. Indoor and outdoor lighting systems, lighting controls, daylighting strategies.
- Building envelope systems. Windows, insulation, weatherization, etc.
- Water and Sewage Systems. Automatic controls, low-flow faucet aerators, low-flow toilets, cooling tower modifications, and irrigation system controls or modifications.
- Desired projects. Other items as desired by the owner.

Buildings and Facilities

Buildings and facilities that will be addressed by multiple energy performance contracts will be statewide and includes about 27.6 million gross square feet. These facilities are all within the statutory responsibility of the Division of Facilities Management, Design and Construction.

We have also identified as a priority project select buildings and systems in the Capitol Complex in Jefferson City, Missouri. This includes the Capitol Building, Broadway Building, Supreme Court Building, Jefferson State Office Building, EDP/Health Lab, Environmental Control Center, and the State Information Center. The major systems include the chilled water and steam loops.

Further information for various buildings and facilities are listed in **Attachment E: Technical Facility Profile**.

RFQ for Energy Performance Contracting Services

Administrative Information

RFQ PHASE

Mandatory Meeting. A mandatory meeting will be held prior to the qualifications due date. Knowledgeable representatives will be available to answer questions about operation and maintenance practices, problems, concerns and future plans. Fill-out the **MEETING Registration Form** in this RFQ to register for the meeting.

The meeting is mandatory for all ESCO's who will later submit qualifications because understanding of requirements and the technical approach will be evaluated in the qualification submittal. No submittal will be accepted from any ESCO who did not have a representative at the meeting. All ESCO's will attend the meeting at the same time so each ESCO hears all questions and answers. Any modifications to the RFQ resulting from questions during the meeting and site visit will be provided to the ESCO's that are sent the RFQ. Only those modifications issued in writing are binding on the owner.

Review of Written Qualifications. Qualifications must be prepared as described in **Attachment C: ESCO Response**. An evaluation team will review and score written qualifications based on the evaluation criteria identified in **Attachment D: Evaluation Criteria**. Based on the overall score, a list of 4-8 firms will be selected as pre-qualified ESCO's. These firms will be used for the Capitol Complex project and all remaining future Energy Performance Contracts. The future projects will be developed at a later date and will be throughout the State.

Audit and Project Development Phase

Technical Energy Audit and Project Development Contract. A Technical Energy Audit and Project Development Contract will be negotiated as presented in **Attachment F: Technical Energy Audit and Project Development Contract** (also see **Attachment A: Special Contract Terms and Conditions**).

Financing/Construction/Implementation Phase

Energy Performance Contract. Following successful completion of the Technical Energy Audit and Project Development Contract, an Energy Performance Contract will be negotiated to implement projects at the facilities listed as given in **Attachment G: Energy Performance Contract** (also see **Attachment A: Special Contract Terms and Conditions**).

By submitting the qualification statement, ESCO agrees to:

Use the Technical Energy Audit and Project Development Contract (**Attachment F**) as the initial document for negotiating a contract including conforming to all applicable sections of **Attachment A: Special Contract Terms and Conditions**.

Use the Energy Performance Contract (**Attachment G**) as the initial document for negotiating a contract, including conforming to all applicable sections of **Attachment A: Special Contract Terms and Conditions**.

FAX TO: 573-751-7277
ATTENTION: Steve Robertson

RFQ REQUEST Fax-Back Form

**Energy Performance Contracting Services for
Various Facilities
Statewide -- Missouri
Project No. 00410-02**

☐ ***Yes, I am interested in receiving a copy of the RFQ for Energy Performance Contracting Services.***

Today's Date: _____

Name: _____

Company Name: _____

Mailing Address:

(city) ***(state)*** ***(zip)***

Phone: _____

Fax: _____

E-mail Address: _____

☐ ***Yes, I would like an electronic copy of the ESCO Response section e-mailed to me.***

Note: The RFQ, including the ESCO Response section, is available on the internet at:
<http://www.oa.mo.gov/fmdc/>

FAX TO: 573-751-7277
ATTENTION: Steve Robertson

MEETING REGISTRATION
Energy Performance Contracting Services for
Various Facilities
Statewide -- Missouri
Project No. 00410-02

The Division of Facilities Management and Design and Construction invites you to attend a meeting prior to responding to the RFQ for Energy Performance Contracting Services. This meeting is mandatory. No qualification statement will be accepted from an ESCO who did not have a representative at the meeting.

DATE: November 1, 2005

TIME: 10:00 AM

LOCATION:

Room 750

Truman State Office Building

301 West High Street

Jefferson City, MO 65102

All ESCO's will meet at the same time so that all respondents will hear the same questions, comments and answers. **NO FOLLOW-UP MEETINGS OR ALTERNATIVE DATES FOR MEETINGS WILL BE ALLOWED UNLESS OFFERED TO ALL RESPONDENTS.**

_____ **Yes, I plan to attend the meeting.**

Today's Date: _____

Name: _____

Company Name: _____

Mailing Address: _____

Phone: _____ **Fax:** _____

E-mail Address: _____

ATTACHMENT A: SPECIAL CONTRACT TERMS AND CONDITIONS

Following are the special contract terms and conditions that will be an integral part of the subsequent contracts and are highlighted here to emphasize their importance. The contracts are included as templates only and may not yet incorporate all of the requirements below.

ENERGY AUDIT PHASE

Payment for Audit. If an energy performance contract is not developed after the audit has been accepted, Owner agrees to pay the cost of the audit as stated in the submitted proposal or as negotiated in the subsequent Technical Energy Audit and Project Development Contract.

Cost Estimates. The technical audit must include estimates of savings for each measure for each year. Also, the cost estimate for each measure must include an estimate of all costs including design, engineering, installation, maintenance, repairs and debt services as well as other categories.

Allowable Sources of Savings. Payment sources to support the capital investment payments are shown below.

The following payment sources will be allowed:

- Energy and water cost savings
- Material/commodity savings including avoided costs such as lamp and ballast replacements, scheduled replacement of parts, etc. (only for the years that these savings are applicable).
- Maintenance cost savings such as terminated service contracts on equipment.

During negotiations, Owner may consider savings to include the following:

- Owner deferred maintenance cost
- Offset of future owner capital cost
- Labor cost savings, in-house

Any cost savings related to maintenance and operation of the facilities will be rigorously reviewed and, if allowed, will be limited to those costs which can be thoroughly documented and approved.

Annual Savings Estimates: The utility, operational and maintenance cost savings for all measures must be estimated for each year during the contract period.

CONSTRUCTION/IMPLEMENTATION PHASE

Equipment Compatibility or Standardization. The Owner values standardization of equipment agency-wide in order to simplify maintenance. New equipment to be installed under this contract must be compatible with existing systems and to the extent possible, be made by the same manufacturer.

COMMISSIONING/GUARANTEE/MONITORING PHASE

Contract Term. The contract term is a maximum of 15 years.

Annual Appropriations. All payments are subject to annual appropriations.

RFQ for Energy Performance Contracting Services
Attachment A: Special Contract Terms and Conditions

Annual Savings Exceed Annual Payments. Actual savings for each year during the contract period shall exceed annual contract payments

Annual Guaranteed Cost Savings. A written annual guarantee will be provided for the entire term of the contract, however, the Owner reserves the option to eliminate measurement and verification of the guarantee at any time. The guarantee shall be such that the sum of utility, and operation and maintenance cost savings for each year will equal or exceed the calculated annual savings and the amount of the annual payment. The ESCO shall provide a yearly itemized cost for the monitoring, verification, and administrative work required to provide the guarantee. If the measurement and verification of the guarantee is eliminated, this cost shall be eliminated from annual payment.

Excess Savings. Annual cost savings beyond the guaranteed minimum savings will be retained by Owner, and will not be allocated to shortfalls in other years.

GENERAL CONTRACT REQUIREMENTS

Prevailing Wage.

The ESCO shall pay not less than the hourly rate of wages as determined by the Department of Labor and Industrial Relations, State of Missouri, in accordance with Section 290.210 through 290.340 RSMo.

Financing.

No public financing (i.e. bonds, certificates of participation, etc.), whereby the state's contract payments with the ESCO is pledged for the payment of debt service, will be allowed.

MBE/WBE Goals.

The ESCO shall have a goal of obtaining 10% MBE and 5% WBE participation for the entire project. ESCO may be required to report participation achieved upon request of the Owner.

RFQ for Energy Performance Contracting Services
Attachment B: Proposed Project Schedule

ATTACHMENT B: PROPOSED PROJECT SCHEDULE

The following schedule is the proposed schedule for information only. It may change depending on what projects are identified to be accomplished.

ACTIVITY	DATE
<u>RFQ Phase</u>	
Issue RFQ	October 10, 2005
Mandatory Meeting (to be arranged)	November 1, 2005
Written inquiries accepted by prospective ESCO's	November 15, 2005
Qualifications Due	November 30, 2005
Qualifications Review and Selection of Finalists	2 weeks
ESCO Selections and Announced	1 week
<u>Technical Energy Audit Phase</u>	
Projects Determination/Identification	4 weeks
Contract Negotiation	4 weeks
Approval and signatures to execute contract	1 week
Audit, Final Report and Presentation	10 weeks
<u>Energy Performance Contract Phase</u>	
Negotiation and Documentation	8 weeks
Approval and signatures to execute contract	2 weeks
Installation	To be negotiated
<u>Commissioning/Monitoring Phase</u>	
Commissioning	To be negotiated
Monitoring	To be negotiated
Staff Training/Other	To be negotiated
Proposed Contract Term	15 Years

Note: This schedule is subject to change.

RFQ for Energy Performance Contracting Services
Attachment C: ESCO Response

ATTACHMENT C: ESCO RESPONSE

GENERAL INFORMATION

Refer to "Administrative Information" in the body of the RFQ for an overview of the process.

For further information, please contact Steve Robertson, PE at 573-526-4968. E-mail
Steve.Robertson@oa.mo.gov

Due Date:

Qualifications must be ***received*** at the below address on or before November 30, 2005 by 1:30 p.m.
Late proposals will not be accepted.

Submit Qualifications:

Prepare responses to "ESCO Profile & Approach to Project" (see below).

Quantity: One original plus five (5) copies. Clearly mark one as "**ORIGINAL**".

Submit Sample Technical Energy Audit (as described below)

This sample should be representative of the type of facility and the type of audit that will be conducted.
The sample audit must have been conducted by a member of the team proposed for this project. Clearly state which member(s) of your project team conducted the audit.

Quantity: One (1) copy.

Delivery

Steve Robertson, PE
Division of Design and Construction
Room 730
Truman State Office Building
301 West High Street
P.O. Box 809
Jefferson City, Missouri 65102

RFQ for Energy Performance Contracting Services
Attachment C: ESCO Response

ESCO PROFILE & APPROACH TO PROJECT

- *An electronic copy of this RFQ section is available for easier preparation.*
- **Answer all questions or state “N/A” if not applicable. Failure to respond to any of the questions may result in a reduction in the respondents score.**
- **Please number and re-state each subheading or question, followed by your response. This improves clarity and makes it much easier to evaluate your proposal.**
- **Number all pages.**

1. LEAD FIRM’S QUALIFICATIONS AND CAPABILITIES

A. Firm Information

- (1) Type of Firm (corporation, partnership, sole proprietorship, joint venture)
- (2) Year Firm Established. Number of years has your firm been in business under its present business name.
- (3) Other Firm Names. Indicate all other names by which your organization has been known and the length of time known by each name.
- (4) Parent Company. If applicable, state name, address, former name if applicable.
- (5) Participating Division or Branch Offices. Identify division or branch offices that will participate in the development of the proposal, in its evaluation process, and/or in the conduct of any services provided (office name, and address).
- (6) Submittal. Submittal is for (parent company, subsidiary, division, branch office)

B. EXPERIENCE OF LEAD FIRM

- (1) Years in Energy Business. State the number of years your firm has been involved in the energy-efficiency related business. State the number of years your firm has offered performance contracting services.
- (2) Number and Value of Contracts. Indicate the number of energy savings performance contracts actually implemented by your firm, each year for the past 3 years. Indicate the associated dollar value. (NOTE: If this response is submitted by a branch office or division of a parent company, indicate the number of projects that have been managed directly by the specific branch or division.) If this response is from a branch office or division of a parent company, please provide project histories for those that have been managed directly by the specific branch or division. If you include projects/contracts managed by team members or subcontractors or by your employees while employed by other firms, **clearly indicate** the name of the company that was responsible for the project.

Include the following information on each project (*no preferred format*):

Project Identification. Name of project owner, type of project (hospital, K-12 school, university, office building, etc.), location (city, state).

Project Dates. Actual construction start and end dates

Project Size. Number of buildings, total square footage, total contract amount and the total project capital cost.

List of Improvements. Type of retrofits and operational improvements related to energy, water and other cost savings.

Projected Annual Savings. State the projected annual energy, water and O&M savings (Therms, kWh, kW, Gallons, etc.).

RFQ for Energy Performance Contracting Services
Attachment C: ESCO Response

Guaranteed Savings. State the amount of the guarantee. Also describe how the guarantee functioned and if your firm was required to pay funds to meet the guarantee.

Actual Annual Savings. State the actual annual energy, water and O&M savings (Therms, kWh, kW, Gallons). Also describe if savings were measured or stipulated.

Contract Terms. Type of contract (shared-savings, lease purchase, guaranteed savings), contract term, and financing arrangement.

Source of Funds. Identify source of funds used for the project. If applicable, describe your firm's role in securing funds.

Technical Design Personnel. Include name(s) of primary technical design personnel.

Project Schedule. Indicate if the project was completed on schedule. If not, please explain.

Comments. *Comment on any special features, services, conditions, etc.*

References. Names and contact information of owner(s)' representatives who can serve as references.

- (3) Full-Time Personnel. Indicate the number of full-time personnel employed by your firm. Describe the number and quality of staff you currently have to conduct technical analysis, engineering design, construction management, construction, training and post-contract monitoring.
- (4) NAESCO Accreditation and other Pre-Qualifiers. Is your firm accredited by the National Association of Energy Savings Companies (NAESCO)? Is your firm pre-qualified for work through the U.S. Department of Energy? Describe the relevance or importance of any accreditations or pre-qualifications with regard to this project.

c. Scope of Services

- (1) Types of Services. Summarize the scope of services (auditing, design, construction, monitoring, operations, maintenance, training, financing, etc.) available from your firm.
- (2) Expertise in Systems. Describe your ability to offer services to upgrade HVAC, controls, lighting, kitchen, laundry and other systems.
- (3) Provision of Financing. Describe general ability and approach to help secure financing. Describe ability to ensure low rates.
- (4) Provision of Insurance. Generally describe your capability to secure insurance policies.
- (5) Expertise in Building Types. Describe what building types your firm specializes in and ability to address the various State of Missouri facilities.

d. Attachments for "Lead Firm's Qualifications and Capabilities" Section

Label Attachments and list here including Attachment Name, Description and Location in RFP Response. Insert attachments here at the end of this section, or include elsewhere in a clearly marked location for easy reference.

2. DESIGN FIRM'S QUALIFICATIONS AND CAPABILITIES

a. Firm Information

- (1) Type of Firm (corporation, partnership, sole proprietorship, joint venture)
- (2) Year Firm Established. Number of years has your firm been in business under its present business name.

RFQ for Energy Performance Contracting Services
Attachment C: ESCO Response

- (3) Other Firm Names. Indicate all other names by which your organization has been known and the length of time known by each name.
- (4) Parent Company. If applicable, state name, address, former name if applicable.
- (5) Participating Division or Branch Offices. State division or branch offices that will participate in the development of the proposal, in its evaluation process, and/or in the conduct of any services provided (office name, and address).

b. Experience of Design Firm

- (1) Years in Energy Business. State the number of years your firm has been involved in the energy-efficiency related business. State the number of years your firm has offered performance contracting services.
- (2) Number and Value of Contracts. Indicate the number of energy savings performance contracts actually implemented by your firm, each year for the past 3 years. Indicated the associated dollar value. (NOTE: If this response is submitted by a branch office or division of a parent company, indicate the number of projects that have been managed directly by the specific branch or division.) If this response is from a branch office or division of a parent company, please provide project histories for those that have been managed directly by the specific branch or division. If you include projects/contracts managed by team members or subcontractors or by your employees while employed by other firms, **clearly indicate** the name of the company that was responsible for the project.

Include the following information on each project (*no preferred format*):

Project Identification. Name of project owner, type of project (hospital, K-12 school, university, office building, etc.), location (city, state).

Project Dates. Actual construction start and end dates

Project Size. Number of buildings, total square footage, total contract amount and the total project capital cost.

List of Improvements. Type of retrofits and operational improvements related to energy, water and other cost savings.

Projected Annual Savings. State the projected annual energy, water and O&M savings (Therms, kWh, kW, Gallons, etc.).

Guaranteed Savings. State the amount of the guarantee. Also describe how the guarantee functioned and if your firm was required to pay funds to meet the guarantee.

Actual Annual Savings. State the actual annual energy, water and O&M savings (Therms, kWh, kW, Gallons). Also describe if savings were measured or stipulated.

Contract Terms. Type of contract (shared-savings, lease purchase, guaranteed savings), contract term, and financing arrangement.

Technical Design Personnel. Include name(s) of primary technical design personnel.

Project Schedule. Indicate if the project was completed on schedule. If not, please explain.

Comments. **Comment on any special features, services, conditions, etc.**

References. Names and contact information of owner(s)' representatives who can serve as references.

RFQ for Energy Performance Contracting Services
Attachment C: ESCO Response

- (3) Full-Time Personnel. Indicate the number of full-time personnel employed by your firm. Describe the number and quality of staff you currently have to conduct technical analysis, engineering design, construction management, construction, training and post-contract monitoring.

c. Attachments for “Design Firm’s Qualifications and Capabilities” Section

Label Attachments and list here including: Attachment Name, Description and Location in RFP Response. Insert attachments here at the end of this section, or include elsewhere in a clearly marked location for easy reference.

3. FINANCIAL FIRM’S QUALIFICATIONS AND CAPABILITIES

The State of Missouri is trying to establish a Master Lease contract to use for financing – however – it may not be established in time for the first few contracts. It may be required for the ESCO to secure financing. If the ESCO does secure financing, it will be a requirement **to seek the best competitive rate by receiving multiple quotes – at least three -- for financing the project. Information required at that time from financial firms will be as listed below. For purposes of the RFQ submittal, only one firm will be needed.**

a. Firm Information

- (1) Type of Firm (corporation, partnership, sole proprietorship, joint venture)
- (2) Year Firm Established. Number of years has your firm been in business under its present business name.
- (3) Other Firm Names. Indicate all other names by which your organization has been known and the length of time known by each name.
- (4) Parent Company. If applicable, state name, address, former name if applicable.
- (5) Participating Division or Branch Offices. State division or branch offices that will participate in the development of the proposal, in its evaluation process, and/or in the conduct of any services provided (office name, and address).

b. Experience of Financial Firm

- (1) Number and Value of Contracts. Indicate the number of energy savings performance contracts actually implemented by your firm, each year for the past 3 years. Indicated the associated dollar value.
- (2) Years in Energy Business. State the number of years your firm has been involved in energy-efficiency related projects

c. FINANCIAL SOUNDNESS

- (1) Financial Statement. Attach your firm’s most recent financial statement or annual report for each of the last three years.
- (2) Statement of Financial Conditions. Attach the most recent annual Statements of Financial Conditions, including balance sheet, income statement and statement of cash flows, dated within the past twelve (12) months. Provide the name, address, and the telephone number of firm(s) that prepared the Financial Statements:
- (3) Accounting Firm Information. If these financial documents were not produced in-house, indicate the name, address and phone number of the firm(s) that prepared these financial statements.

RFQ for Energy Performance Contracting Services
Attachment C: ESCO Response

d. Attachments for “Financial Firm’s Qualifications and Capabilities” Section

Label Attachments and list here including: Attachment Name, Description and Location in RFQ Response. Insert attachments here at the end of this section, or include elsewhere in a clearly marked location for easy reference.

4. Technical Approach

a. Audit

- (1) Technical Analysis. Describe your general approach to auditing a facility. What is involved? How is owner involved? Methodical approach? Level of expertise involved? Information and resources needed from owner?
- (2) Sample Technical Audit. Submit a sample technical audit conducted by your firm for similar state facilities (as directed in the Qualification Submittal Information). This audit must include detailed energy and economic calculations.
- (3) Sample Technical Energy Audit and Project Development Contract. Describe any modifications you recommend or require regarding the Technical Energy Audit and Project Development Contract in this RFQ.

b. Design/Construction

- (1) Engineering Design. Describe your firm’s approach to the technical design of this project.
- (2) Standards of Comfort. Describe standards of comfort and functionality that are generally used for light levels, space temperatures, ventilation rates, etc. in the intended facilities.

c. Engineering Analysis

- (1) Baseline Calculation Methodology. Describe in detail the methodology your firm normally uses to compute baseline of energy and water use as well as performance.
- (2) Adjustment to Baseline Methodology. Describe the method(s) used to adjust the energy, water and O&M baseline due to such factors as weather and facility use changes. Describe factors that would necessitate adjustment. Refer to **Attachment E: Technical Facility Profile** and address issues regarding buildings projected to have substantial changes in use.
- (3) Savings Calculations. List all procedures, formulas and methodologies including special metering or equipment, which your firm will use to calculate energy, water and O&M savings. Include assumptions made in the calculations.
- (4) Dollar Savings Calculations. Describe the procedure to assign dollar values to the savings. Include energy savings as well as maintenance or material savings.
- (5) Cost Savings Guarantee Calculations. Describe your firm’s procedures and schedule for measuring financial performance of projects. Describe how the guarantee provisions work in the event that project results vary from projections. Also describe how excess savings can be documented.

d. Attachments for “Technical Approach” Section

Label Attachments and list here including Attachment Name, Description and Location in RFQ Response. Insert attachments here at the end of this section, or include elsewhere in a clearly marked location for easy reference.

RFQ for Energy Performance Contracting Services
Attachment C: ESCO Response

5. PERFORMANCE CONTRACTING APPROACH

a. Approach

- (1) Differentiation of Your Firm. Describe particular characteristics of how your firm approaches performance contracting.
- (2) Management. Briefly describe your firm's approach to management.
- (3) Model Performance Contract Agreement. Describe any modifications you recommend regarding the model energy performance contract. Note that **Attachment A: Special Terms and Conditions** identifies specific terms that will be incorporated into the model contract agreement.

b. Other Services

- (1) Training Provisions. Describe your firm's capabilities in providing technical training for facility personnel and experience on past projects. Describe your firm's involvement in developing training manuals for facility staff.
- (2) Performance Guarantee. Describe your firm's approach to the performance guarantee. When is it recommended for the guarantee to be dropped? Does the guarantee cover the annual monitoring & verification and maintenance contract costs?
- (3) Maintenance Contract. Describe the types of services that can be included in the maintenance contract. Comment on whether Owner's maintenance staff can perform some of these duties if desired, and describe any impact on the guarantee. (These duties could include programming and maintaining the control system, installing lighting retrofits, maintaining HVAC equipment, etc.). Describe your firm's flexibility in terminating the guarantee. Describe the required length of the maintenance contract and the relationship with the guarantee in the event that Owner chooses to terminate the maintenance contract prior to the end of the performance contract.
- (4) Project Financing. Describe your firm's preferred approach to providing or arranging financing for the proposed project. Describe the mechanics of the financing arrangement, including equipment ownership, responsibilities/liabilities of each party, security interest required and any special terms and conditions that may be associated with the financing this project.

c. Construction Issues

- (1) Environmental Liability. State your firm's position with respect to the acceptance of liability for any hazardous materials encountered during the course of the project. If the firm is willing to accept any level of environmental liability, state the level and provide a cost analysis.
- (2) Equipment Ownership and Service Responsibility. Describe the status of equipment ownership and service responsibility at contract expiration.
- (3) Warranties. State the nature and term of typical warranties.

d. Standardized Contracts

Confirm that you will use the **Model Technical Energy Audit (Attachment F)** and the **Energy Performance Contracts (Attachment G)** as a basic contract to customize for this project. Or, state any objections you have.

e. Attachments for "Performance Contracting Approach" Section

Label Attachments and list here including Attachment Name, Description and Location in RFQ Response. Insert attachments here at the end of this section, or include elsewhere in a clearly marked location for easy reference.

RFQ for Energy Performance Contracting Services
Attachment C: ESCO Response

6. Various Facilities Approach

a. Project Scope

- (1) Types of Services. Summarize the scope of services (auditing, design, construction, monitoring, operations, maintenance, training, financing, etc.) offered for the various state facilities.
- (2) Potential Projects. Based on your preliminary assessment of the information provided, describe any typical equipment modifications, installations or replacements for the facilities that your firm would consider installing as part of a project. Address energy, water and operation and maintenance opportunities. Also describe any special features, renewable technologies, or advanced technologies that might be applicable. Describe any special features or services associated with your proposed improvements that would add value to Owner. Describe your approach to achieve compatibility (such as open systems) and/or standardization of equipment in the facilities to be addressed.
- (3) Benefits. Describe the specific benefits your firm can offer.

b. Relevant Experience to Apply to the Various State Facilities

- (1) Areas of Expertise. List all areas of expertise related to potential energy and water improvements in facilities. Include specialized areas of expertise in areas that might be relevant to our facilities (laboratories, daylight design, etc.) Also describe the professional and skilled trades that your firm customarily self performs with its own employees.
- (2) Experience in Similar Projects. Identify projects your firm has completed that are similar in size, scope, facility type, and retrofit opportunity. Reference projects listed above if needed.

c. Project Management

- (1) Management Approach. Briefly describe your firm's approach to managing projects.
- (2) Qualifications and Experience of Staff Assigned to this Project. Identify the individual who will have primary responsibility for each task and phase of the project. List name, title, intended role and responsibilities for the duration of the contract, educational background, specific qualifications related to role and responsibilities, past relevant experience, number of years of relevant experience, supervisory responsibilities if relevant, list of projects individual was associated with during the last five (5) years including type of project and project cost and resume. Tasks and phases to address include technical analysis, engineering design, construction management, construction, training and post-contract monitoring. Indicate the percent of time each person is available to work on this project.

d. Technical and Construction Issues

- (1) Construction Management. Describe generally how your firm would work with current building management and maintenance personnel in order to coordinate construction and avoid conflicts with the building's operation and use. Describe your flexibility and/or any limitations regarding possible Owner activities such as: management of additional energy and water projects, monitoring of installation and performance of ESCO projects, integration of other identified capital needs with ESCO projects which may or may not contain energy and water saving opportunities.
- (2) Project Schedule. Propose a typical project schedule.

RFQ for Energy Performance Contracting Services
Attachment C: ESCO Response

- (3) Operations and Maintenance. Describe any major changes in operations or maintenance of the facilities that your firm foresees based on the information provided. Briefly describe the maintenance responsibilities of your firm and Owner. Describe how your firm would provide appropriate training in operations and maintenance of installed improvements.
- (4) Standards of Comfort. Describe standards of comfort and functionality that you would propose for light levels, space temperatures, ventilation rates, etc. in the intended facilities. Also describe how those standards will be maintained throughout the contract term.

e. Attachments for “Various Facilities Approach” Section.

Label Attachments and list here including Attachment Name, Description and Location in RFQ Response. Insert attachments here at the end of this section, or include elsewhere in a clearly marked location for easy reference.

7. Cost and Pricing

a. *Cost of Audit.*

- (1) Describe your approach to auditing a facility. Ensure that your approach is consistent with the approach and requirements included in **Attachment F: Sample Technical Energy Audit and Project Development Contract**, unless exceptions were noted above.
- (2) State the total fixed cost of the technical energy audit.
- (3) State the cost per square foot of the audit.

This cost will be evaluated on the basis of reasonableness, so an unrealistically high or low cost will be devalued in the evaluation process. The audit cost will be the reimbursable cost if no performance contract is negotiated after completion of the Technical Energy Audit.

b. Markup Costs and Fees. Markup costs are disclosed to provide a typical project costing approach for a project of similar scope and size. The markups will also be used in the Technical Energy Audit Contract and subsequent Energy Performance Contract. Markups can be negotiated downward. A substantial change in the scope and size of the project may necessitate renegotiation of the markups.

- (1) Provide markups for each category you use in your pricing structure (categories may include but are not limited to: overhead, profit, markups on subcontractors, equipment/supplies/rentals, self-performed work, design, construction management, warranty, commissioning, monitoring and verification, contingency, training, or any other markup category used by ESCO.) (ESCOs will further qualify these markups in the “Best Value” section below.)
- (2) To clarify the use of these markups, describe how each markup is applied, when it is used, etc.
- (3) Include two hypothetical examples to show how each of the markups are applied: i) a standard lighting upgrade and ii) typical boiler replacement (or other large equipment of your choice).
- (4) If contingency is a category, describe how excess contingency dollars will be used.

RFQ for Energy Performance Contracting Services

Attachment C: ESCO Response

- c. Other Costs.** Describe other costs such as maintenance and monitoring agreements and describe how they may be applied. Also point out if these are annual costs and if they are required each year of the contract.
- d. Best Value.**
 - (1) Describe how your approach to performance contracting delivers best value for the investment. This is an opportunity to point out how your company may be able to deliver a more cost-effective overall project due to corporate structure, relationships with vendors, depth of experience and expertise, local relationships and experience, experience in similar types of facilities, knowledge of particular retrofits, etc.
 - (2) Describe any utility rebates or other incentives that you can potentially provide and/or facilitate.
- e. Open Book Pricing.** Describe your firm's approach and experience in providing open-book pricing. Note that open book pricing is required, including open book pricing of itemized costs from subcontractors and vendors.
- f. Attachments for "Cost" Section.**

Label Attachments and list here including Attachment Name, Description and Location in RFQ Response. Insert attachments here at the end of this section, or include elsewhere in a clearly marked location for easy reference.

RFQ for Energy Performance Contracting Services
Attachment D: Evaluation Criteria

ATTACHMENT D: EVALUATION CRITERIA

The criteria listed below will be used to evaluate written proposals. The scoring weight is listed for each criterion.

These criteria will be applied and interpreted solely at the discretion of the Owner. Qualification statements should include all necessary information that is pertinent to these evaluation criteria. Additional information required for proper assessment of qualifications may be requested from the ESCO at the discretion of Owner.

The criteria are not ranked in order of importance. The sub-criteria are of approximate equal weight.

Written Proposal Criteria

- 1. LEAD FIRM'S QUALIFICATIONS AND CAPABILITIES (25 Points)**
 - a. **Firm Information.**
 - b. **Experience of Lead Firm.** General experience in energy-related and performance contracting services.
 - c. **Scope of Services.** Comprehensiveness of management, maintenance and monitoring services offered.
- 2. DESIGN FIRM'S QUALIFICATIONS AND CAPABILITIES (10 Points)**
 - a. **Firm Information.**
 - b. **Experience of Design Firm.** General experience in energy-related and performance contracting services.
- 3. TECHNICAL APPROACH (20 Points)**
 - a. **Audit.** Quality of the sample technical audit, as completed by the person(s) responsible for project technical design.
 - b. **Design/Construction.** Overall approach.
 - c. **Engineering Analysis.** Reasonableness of methodologies to determine the baseline and savings.
- 4. PERFORMANCE CONTRACTING APPROACH (20 Points)**
 - a. **Approach.** Overall approach to performance contracting and recommended contract adjustments.
 - b. **Other Services.** Full range of services and flexibility in applying those services.
 - c. **Construction Issues.** Ways of handling environmental liabilities, warranties and equipment service.
 - d. **Standardized Contracts.** Willingness to use state-approved contracts.
- 5. VARIOUS FACILITIES APPROACH (15 Points)**
 - a. **Project Scope.** Understanding of state government facility conditions, systems and operation and maintenance projects. Responsive to strategies in adapting control strategies, equipment and maintenance practices in response to changes in utility rates, technology, and building conditions in order to enhance project performance. Comprehensiveness and clarity of the technical approach to this project based on improvements likely to be included. Relevance and benefits of proposed retrofits for these facilities.
 - b. **Relevant Experience to Apply to Various Facilities.** Relevance and documented savings of past projects completed that are similar in size, scope, and building type.

RFQ for Energy Performance Contracting Services
Attachment D: Evaluation Criteria

- c. **Project Management.** Management approach and relevant qualifications of key personnel assigned to the project involved in technical auditing and design, project management and construction, with respect to the size, scope and building types for state facilities.
- d. **Technical and Construction Issues.** Construction management, scheduling, operation and maintenance approach, approach to compatibility/openness/ standardization of equipment, standards of comfort and provision of insurance.

6. COST AND PRICING (10 Points)

Cost and pricing will be evaluated by State reviewers who will use their judgment, knowledge and experience to determine reasonableness and consistency. Costs will also be evaluated based on established catalog and market prices, historical prices and independent cost estimates.

- a. **Technical Energy Audit Phase: Cost of Audit.** Cost of the Technical Energy Audit for the proposed scope of buildings. This cost or unit cost will be evaluated on the basis of reasonableness for the size, scope and type of the facilities. An unrealistically low cost will be devalued.
- b. **Construction/Installation Phase: Markup Costs.** Markup costs will be considered and will be disclosed for two purposes: 1) to illustrate typical project costing approach for projects of similar scope and size; and 2) to establish costs for use in the technical energy audit. They are evaluated for the purpose of award and may be changed during contract negotiations based on the scope and/or magnitude of the project. These rates will be expected to be used in the Technical Energy Audit and subsequent Energy Performance Contract, however, scope and size of project may change and necessitate a change in the markups provided below. The markups will be evaluated for reasonableness. The ESCO may use different customized categories or present an alternative pricing structure.
- c. **Best Value.** Value for the investment.
- d. **Open Book Pricing.** Experience and willingness to provide open-book pricing.

(NOTE: Following the evaluation, all firms will be notified of their ranking. The highest scoring firms (4-8) will be invited to participate in assisting the Division of Facilities Management, Design and Construction in future projects at state facilities. The packaging of the facilities into various projects are yet to be determined.)

RFQ for Energy Performance Contracting Services
Attachment D: Evaluation Criteria

ESCO Rating Possible Points	Individual Ratings						
	25	10	20	20	15	10	100
Firms that submitted a timely qualification statement for consideration	Lead Firm's Qualifications	Design Firm's Qualifications	Technical approach	Performance Contracting Approach	Various Facilities Approach	Cost and Pricing	Total Points
							0
							0
							0
							0
							0
							0
							0
							0
							0
							0
							0
							0
							0
							0

RFQ for Energy Performance Contracting Services
Attachment E: TECHNICAL FACILITY PROFILE

ATTACHMENT E: TECHNICAL FACILITY PROFILE

The information in this technical facility profile is provided to give ESCO's a summary overview of the state's various facilities. The information was provided from the state's database of Lands and Buildings. The ESCO will be responsible for verifying the accuracy of the data, as necessary. The following is an overview of the 27.6 million gross square feet of facilities.

The following table shows the facilities sorted by department:

Department	Division	Net SF	% of Total NSF	Gross SF	% of Total GSF
Department of Corrections (DOC)	ADULT INSTIT	7,011,304	30.07%	8,711,119	31.61%
Office of Administration (OA)	DFMDC	3,456,237	14.82%	4,029,033	14.62%
Department of Mental Health (DMH)	COMP PSYCH SERV	2,739,439	11.75%	3,096,770	11.24%
Department of Public Safety (DPS)	ADJ GENERAL	2,345,376	10.06%	2,917,975	10.59%
DMH	MRDD	2,002,110	8.59%	2,383,132	8.65%
Department of Natural Resources (DNR)	PKS & HISTORIC PRESERV	1,680,916	7.21%	1,859,040	6.75%
DPS	VETS COMM	1,021,860	4.38%	1,043,962	3.79%
Department of Elementary and Secondary Education (DESE)	SPECIAL ED	958,165	4.11%	1,130,838	4.10%
Department of Agriculture (DOA)	FAIRS	563,577	2.42%	589,507	2.14%
Department of Social Services (DOSS)	YOUTH SERVICES	477,994	2.05%	568,103	2.06%
DPS	HWY PATROL	387,465	1.66%	451,094	1.64%
Department of Labor and Industrial Relations (DOLIR)	EMP SECURITY	288,223	1.24%	344,437	1.25%
DOSS	GEN SERV	125,892	0.54%	142,078	0.52%
Department of Revenue (DOR)	LOTTERY	72,798	0.31%	79,109	0.29%
Department of Economic Development (DED)	WORK FORCE DEVEL	61,304	0.26%	75,216	0.27%
DNR	GEOLOGICAL ASS DIVISION	49,150	0.21%	50,700	0.18%
DOLIR	WORK COMP	35,255	0.15%	36,463	0.13%
DPS	WATER PATROL	33,155	0.14%	37,262	0.14%
DED	TOURISM	7,338	0.03%	8,571	0.03%
Total:		23,317,558		27,554,409	

RFQ for Energy Performance Contracting Services
Attachment E: TECHNICAL FACILITY PROFILE

The following table shows the facilities sorted by primary function:

Primary Function	NSF	% of Total NSF	GSF	% of Total GSF
OFFICE	4,133,318	17.73%	4,897,094	17.77%
ARMORY	1,515,713	6.50%	1,863,451	6.76%
PRISON H U-MAX	1,345,547	5.77%	1,795,447	6.52%
DORMITORY	1,227,772	5.27%	1,414,852	5.13%
SCHOOL-ELEM/SEC	1,122,109	4.81%	1,479,039	5.37%
NURSING CARE	933,060	4.00%	956,594	3.47%
KITCHEN/DINING	898,133	3.85%	1,058,456	3.84%
OTHER	884,819	3.79%	1,042,349	3.78%
WAREHOUSE	845,566	3.63%	925,255	3.36%
MAINTENANCE/SHOP	787,309	3.38%	877,321	3.18%
PRISON PROGRAM	767,123	3.29%	986,737	3.58%
PRISON H U-MED	736,633	3.16%	954,831	3.47%
GROUP HOME MRDD	630,963	2.71%	695,823	2.53%
PARKING GARAGE	599,258	2.57%	641,173	2.33%
HOSPITAL	593,023	2.54%	667,574	2.42%
CLINIC	526,144	2.26%	572,362	2.08%
VACANT	407,438	1.75%	595,790	2.16%
RESIDENCE	357,920	1.53%	410,532	1.49%
RECREATION	355,747	1.53%	418,545	1.52%
PSYCH CARE	333,565	1.43%	393,773	1.43%
HISTORIC	322,101	1.38%	337,614	1.23%
MANUFACTURING	311,179	1.33%	348,334	1.26%
AGRICULTURE	288,398	1.24%	294,558	1.07%
PRISON H U-MIN	274,567	1.18%	335,840	1.22%
AUDITORIUM	248,004	1.06%	285,027	1.03%
GYM/ATHLETIC CT	216,129	0.93%	242,754	0.88%
STORAGE	213,249	0.91%	224,747	0.82%
WRHSE W/O UTIL	200,432	0.86%	211,948	0.77%
LIBRARY	170,573	0.73%	220,210	0.80%
EXHIBITION	169,551	0.73%	180,180	0.65%
MOTEL	167,282	0.72%	190,457	0.69%
LAUNDRY	145,236	0.62%	169,657	0.62%
CONCESSION	136,731	0.59%	145,709	0.53%
SCHOOL, VOC EDU	134,190	0.58%	147,784	0.54%
BARRACKS	123,729	0.53%	136,390	0.49%
LAB, RESEARCH	119,030	0.51%	119,300	0.43%
CHAPEL	117,105	0.50%	130,735	0.47%
UTILITY-POWER	100,058	0.43%	112,704	0.41%
HANGER,AIRCRAFT	84,702	0.36%	184,921	0.67%
SHELTER	82,621	0.35%	88,321	0.32%
BATHHOUSE	79,639	0.34%	91,968	0.33%
COURTHOURS	76,356	0.33%	109,042	0.40%
INFO CENTER	71,619	0.31%	78,517	0.28%
REPAIR GARAGE	71,452	0.31%	79,292	0.29%
RESTROOM-PIT	63,524	0.27%	68,045	0.25%

RFQ for Energy Performance Contracting Services
Attachment E: TECHNICAL FACILITY PROFILE

Primary Function	NSF	% of Total NSF	GSF	% of Total GSF
LAB,NONSCIENCE	60,658	0.26%	66,621	0.24%
PRISON CNTL CTR	52,063	0.22%	60,344	0.22%
LAB SCIENCE	35,809	0.15%	37,496	0.14%
CLASSROOM	23,088	0.10%	28,592	0.10%
UTILITY-WATER	22,113	0.09%	23,704	0.09%
GREEN HOUSE	17,235	0.07%	20,086	0.07%
UTILITY-ELEC	15,832	0.07%	16,212	0.06%
FIRING RANGE	15,085	0.06%	16,106	0.06%
UTILITY-BOILER	14,884	0.06%	15,685	0.06%
FIRE STATION	13,175	0.06%	14,746	0.05%
UTILITY-A/C	12,511	0.05%	13,142	0.05%
NATATORIUM	11,632	0.05%	14,271	0.05%
RESTROOM-FLUSH	9,929	0.04%	10,687	0.04%
UTILITY-OTHER	8,322	0.04%	15,056	0.05%
CONFERENCE	7,048	0.03%	8,292	0.03%
GUARD TOWER	4,267	0.02%	5,028	0.02%
UTILITY-HEAT	2,578	0.01%	3,148	0.01%
UTILITY-SEWER	1,925	0.01%	3,325	0.01%
PK RENTAL CABIN	787	0.00%	816	0.00%
Total:	23,317,558		27,554,409	

The following table sorts the facilities by largest square footage, by county:

County	NSF	% of Total NSF	GSF	% of Total GSF
COLE	4,984,218	21.38%	5,613,673	20.37%
ST LOUIS CITY	2,468,872	10.59%	3,057,623	11.10%
ST FRANCOIS	1,768,289	7.58%	1,941,516	7.05%
CALLAWAY	1,434,697	6.15%	1,644,851	5.97%
ST LOUIS CO	1,296,780	5.56%	1,463,004	5.31%
JACKSON	887,539	3.81%	1,084,596	3.94%
BUCHANAN	782,939	3.36%	975,999	3.54%
SALINE	711,308	3.05%	765,599	2.78%
DEKALB	656,316	2.81%	823,531	2.99%
PETTIS	634,655	2.72%	670,485	2.43%
VERNON	481,696	2.07%	718,515	2.61%
RANDOLPH	474,068	2.03%	553,786	2.01%
AUDRAIN	448,098	1.92%	576,104	2.09%
PIKE	353,640	1.52%	664,464	2.41%
MISSISSIPPI	336,748	1.44%	535,115	1.94%
LAFAYETTE	306,228	1.31%	343,408	1.25%
LAWRENCE	304,341	1.31%	322,860	1.17%
MONITEAU	287,643	1.23%	324,502	1.18%
WASHINGTON	270,070	1.16%	386,822	1.40%
GREENE	265,535	1.14%	329,023	1.19%
COOPER	262,437	1.13%	324,391	1.18%

RFQ for Energy Performance Contracting Services
Attachment E: TECHNICAL FACILITY PROFILE

County	NSF	% of Total NSF	GSF	% of Total GSF
PHELPE	225,545	0.97%	235,921	0.86%
CLINTON	224,607	0.96%	238,520	0.87%
JOHNSON	218,606	0.94%	258,695	0.94%
CAPE GIRARDEAU	205,884	0.88%	219,810	0.80%
BUTLER	181,642	0.78%	212,029	0.77%
CAMDEN	174,290	0.75%	192,216	0.70%
WEBSTER	162,921	0.70%	176,442	0.64%
NODAWAY	150,418	0.65%	174,316	0.63%
LIVINGSTON	138,634	0.59%	179,437	0.65%
BOONE	128,096	0.55%	154,883	0.56%
JEFFERSON	119,342	0.51%	133,560	0.48%
LACLEDE	118,450	0.51%	131,974	0.48%
LINCOLN	111,133	0.48%	124,357	0.45%
FRANKLIN	96,501	0.41%	107,940	0.39%
ST CHARLES	94,080	0.40%	134,414	0.49%
BARRY	92,973	0.40%	107,661	0.39%
MARION	86,586	0.37%	90,957	0.33%
SCOTT	86,272	0.37%	98,454	0.36%
JASPER	86,033	0.37%	100,907	0.37%
NEWTON	68,509	0.29%	76,214	0.28%
STODDARD	67,824	0.29%	72,761	0.26%
NEW MADRID	66,062	0.28%	73,664	0.27%
ADAIR	65,990	0.28%	78,874	0.29%
DENT	58,894	0.25%	68,234	0.25%
MACON	48,484	0.21%	55,049	0.20%
CLAY	47,456	0.20%	51,664	0.19%
GRUNDY	44,100	0.19%	50,549	0.18%
CRAWFORD	43,722	0.19%	47,490	0.17%
LINN	36,295	0.16%	42,304	0.15%
GENTRY	35,358	0.15%	45,084	0.16%
MONROE	34,815	0.15%	38,792	0.14%
HOLT	34,502	0.15%	39,732	0.14%
MONTGOMERY	32,069	0.14%	36,817	0.13%
HOWELL	31,195	0.13%	36,392	0.13%
CASS	25,553	0.11%	28,084	0.10%
MILLER	24,940	0.11%	28,662	0.10%
WAYNE	24,552	0.11%	28,595	0.10%
MCDONALD	24,517	0.11%	28,697	0.10%
HENRY	23,597	0.10%	27,688	0.10%
BARTON	23,260	0.10%	27,154	0.10%
TEXAS	22,806	0.10%	25,625	0.09%
PLATTE	22,025	0.09%	24,014	0.09%
RAY	19,944	0.09%	22,528	0.08%
MADISON	19,924	0.09%	23,209	0.08%
RIPLEY	18,598	0.08%	21,659	0.08%
CARROLL	18,340	0.08%	21,000	0.08%
PERRY	17,014	0.07%	19,946	0.07%
WARREN	16,544	0.07%	19,393	0.07%
CLARK	16,478	0.07%	18,372	0.07%
LEWIS	16,016	0.07%	18,962	0.07%

RFQ for Energy Performance Contracting Services
Attachment E: TECHNICAL FACILITY PROFILE

County	NSF	% of Total NSF	GSF	% of Total GSF
CEDAR	15,840	0.07%	18,092	0.07%
GASCONADE	15,452	0.07%	16,992	0.06%
DUNKLIN	14,135	0.06%	15,549	0.06%
HICKORY	13,553	0.06%	15,253	0.06%
BENTON	12,478	0.05%	12,958	0.05%
BATES	12,346	0.05%	13,965	0.05%
PULASKI	11,320	0.05%	11,320	0.04%
STONE	10,913	0.05%	12,471	0.05%
STE GENEVIEVE	10,072	0.04%	10,993	0.04%
CHRISTIAN	9,632	0.04%	10,024	0.04%
WRIGHT	8,820	0.04%	10,228	0.04%
REYNOLDS	6,027	0.03%	6,918	0.03%
IRON	5,264	0.02%	5,485	0.02%
HOWARD	2,367	0.01%	2,633	0.01%
ATCHISON	1,000	0.00%	1,000	0.00%
MULTIPLE COUNTIES	760	0.00%	894	0.00%
OREGON	66	0.00%	66	0.00%
Total:	23,317,558		27,554,409	

The following table sorts the facilities by county (alphabetically) and by department:

Dept	County	NSF	% of Total NSF	GSF	% of Total GSF
DMH	ADAIR	16,790	0.07%	18,772	0.07%
DNR	ADAIR	22,210	0.10%	26,014	0.09%
DPS	ADAIR	26,990	0.12%	34,088	0.12%
DED	ATCHISON	1,000	0.00%	1,000	0.00%
DOC	AUDRAIN	292,943	1.26%	416,571	1.51%
DOSS	AUDRAIN	5,935	0.03%	7,200	0.03%
DPS	AUDRAIN	149,220	0.64%	152,333	0.55%
DESE	BARRY	8,666	0.04%	9,628	0.03%
DNR	BARRY	67,145	0.29%	77,842	0.28%
DPS	BARRY	17,162	0.07%	20,191	0.07%
DNR	BARTON	6,935	0.03%	8,030	0.03%
DPS	BARTON	16,325	0.07%	19,124	0.07%
DOSS	BATES	12,346	0.05%	13,965	0.05%
DNR	BENTON	12,478	0.05%	12,958	0.05%
DESE	BOONE	9,439	0.04%	10,129	0.04%
DMH	BOONE	78,200	0.34%	97,008	0.35%
DNR	BOONE	21,363	0.09%	25,283	0.09%
DPS	BOONE	19,094	0.08%	22,463	0.08%
DED	BUCHANAN	7,542	0.03%	9,428	0.03%
DESE	BUCHANAN	23,084	0.10%	25,589	0.09%
DMH	BUCHANAN	116,420	0.50%	135,110	0.49%
DNR	BUCHANAN	8,540	0.04%	9,953	0.04%
DOC	BUCHANAN	461,573	1.98%	522,646	1.90%
DOSS	BUCHANAN	23,044	0.10%	26,491	0.10%

RFQ for Energy Performance Contracting Services
Attachment E: TECHNICAL FACILITY PROFILE

Dept	County	NSF	% of Total NSF	GSF	% of Total GSF
DPS	BUCHANAN	109,051	0.47%	194,710	0.71%
OA	BUCHANAN	33,685	0.14%	52,072	0.19%
DESE	BUTLER	15,711	0.07%	17,265	0.06%
DMH	BUTLER	38,471	0.16%	44,497	0.16%
DNR	BUTLER	16,818	0.07%	19,305	0.07%
DOSS	BUTLER	71,618	0.31%	80,987	0.29%
DPS	BUTLER	39,024	0.17%	49,975	0.18%
DESE	CALLAWAY	291,709	1.25%	304,749	1.11%
DMH	CALLAWAY	752,483	3.23%	865,469	3.14%
DOC	CALLAWAY	318,316	1.37%	393,541	1.43%
DOSS	CALLAWAY	35,765	0.15%	40,060	0.15%
DPS	CALLAWAY	21,424	0.09%	24,442	0.09%
OA	CALLAWAY	15,000	0.06%	16,590	0.06%
DNR	CAMDEN	164,324	0.70%	181,588	0.66%
DOSS	CAMDEN	9,966	0.04%	10,628	0.04%
DESE	CAPE GIRARDEAU	14,332	0.06%	15,700	0.06%
DMH	CAPE GIRARDEAU	27,592	0.12%	30,010	0.11%
DNR	CAPE GIRARDEAU	25,127	0.11%	26,915	0.10%
DPS	CAPE GIRARDEAU	138,833	0.60%	147,185	0.53%
DPS	CARROLL	18,340	0.08%	21,000	0.08%
DESE	CASS	3,465	0.01%	3,808	0.01%
DPS	CASS	22,088	0.09%	24,276	0.09%
DNR	CEDAR	15,840	0.07%	18,092	0.07%
DOSS	CHRISTIAN	9,632	0.04%	10,024	0.04%
DNR	CLARK	16,478	0.07%	18,372	0.07%
DOSS	CLAY	47,456	0.20%	51,664	0.19%
DESE	CLINTON	26,634	0.11%	29,268	0.11%
DNR	CLINTON	57,976	0.25%	69,255	0.25%
DPS	CLINTON	139,997	0.60%	139,997	0.51%
DESE	COLE	9,267	0.04%	10,158	0.04%
DNR	COLE	19,600	0.08%	19,600	0.07%
DOC	COLE	1,291,140	5.54%	1,479,706	5.37%
DOLIR	COLE	203,105	0.87%	221,962	0.81%
DOR	COLE	72,798	0.31%	79,109	0.29%
DPS	COLE	537,948	2.31%	613,062	2.22%
OA	COLE	2,850,360	12.22%	3,190,076	11.58%
DOC	COOPER	257,757	1.11%	319,191	1.16%
DPS	COOPER	4,680	0.02%	5,200	0.02%
DNR	CRAWFORD	43,722	0.19%	47,490	0.17%
DOC	DEKALB	656,316	2.81%	823,531	2.99%
DNR	DENT	58,894	0.25%	68,234	0.25%
DPS	DUNKLIN	14,135	0.06%	15,549	0.06%
DESE	FRANKLIN	12,006	0.05%	13,174	0.05%
DNR	FRANKLIN	60,512	0.26%	66,644	0.24%
DPS	FRANKLIN	23,983	0.10%	28,122	0.10%
DNR	GASCONADE	15,452	0.07%	16,992	0.06%
DMH	GENTRY	13,946	0.06%	19,423	0.07%
DPS	GENTRY	21,412	0.09%	25,661	0.09%
DESE	GREENE	20,702	0.09%	22,700	0.08%

RFQ for Energy Performance Contracting Services
Attachment E: TECHNICAL FACILITY PROFILE

Dept	County	NSF	% of Total NSF	GSF	% of Total GSF
DMH	GREENE	18,672	0.08%	19,648	0.07%
DOLIR	GREENE	21,875	0.09%	29,612	0.11%
DPS	GREENE	129,074	0.55%	144,777	0.53%
OA	GREENE	75,212	0.32%	112,286	0.41%
DNR	GRUNDY	22,167	0.10%	25,843	0.09%
DPS	GRUNDY	21,933	0.09%	24,706	0.09%
DPS	HENRY	23,597	0.10%	27,688	0.10%
DNR	HICKORY	13,553	0.06%	15,253	0.06%
DNR	HOLT	34,502	0.15%	39,732	0.14%
DNR	HOWARD	2,367	0.01%	2,633	0.01%
DPS	HOWELL	31,195	0.13%	36,392	0.13%
DNR	IRON	5,264	0.02%	5,485	0.02%
DED	JACKSON	1,468	0.01%	2,700	0.01%
DESE	JACKSON	94,935	0.41%	104,276	0.38%
DMH	JACKSON	309,208	1.33%	332,393	1.21%
DNR	JACKSON	8,014	0.03%	9,674	0.04%
DOC	JACKSON	73,105	0.31%	112,744	0.41%
DOLIR	JACKSON	43,960	0.19%	54,956	0.20%
DOSS	JACKSON	3,808	0.02%	4,292	0.02%
DPS	JACKSON	193,845	0.83%	219,385	0.80%
OA	JACKSON	159,196	0.68%	244,176	0.89%
DED	JASPER	18,800	0.08%	23,500	0.09%
DESE	JASPER	17,472	0.07%	19,200	0.07%
DMH	JASPER	18,326	0.08%	21,384	0.08%
DPS	JASPER	31,435	0.13%	36,823	0.13%
DESE	JEFFERSON	25,442	0.11%	27,958	0.10%
DNR	JEFFERSON	22,214	0.10%	24,826	0.09%
DOSS	JEFFERSON	18,774	0.08%	21,835	0.08%
DPS	JEFFERSON	52,912	0.23%	58,941	0.21%
DNR	JOHNSON	48,557	0.21%	56,189	0.20%
DPS	JOHNSON	170,049	0.73%	202,506	0.73%
DNR	LACLEDE	85,560	0.37%	95,215	0.35%
DPS	LACLEDE	32,890	0.14%	36,759	0.13%
DESE	LAFAYETTE	18,460	0.08%	20,511	0.07%
DMH	LAFAYETTE	198,445	0.85%	218,461	0.79%
DNR	LAFAYETTE	22,837	0.10%	26,688	0.10%
DOSS	LAFAYETTE	21,369	0.09%	25,920	0.09%
DPS	LAFAYETTE	45,117	0.19%	51,828	0.19%
DOSS	LAWRENCE	23,284	0.10%	26,731	0.10%
DPS	LAWRENCE	281,057	1.21%	296,129	1.07%
DNR	LEWIS	16,016	0.07%	18,962	0.07%
DNR	LINCOLN	84,389	0.36%	94,432	0.34%
DOSS	LINCOLN	26,744	0.11%	29,925	0.11%
DNR	LINN	36,295	0.16%	42,304	0.15%
DESE	LIVINGSTON	4,625	0.02%	5,928	0.02%
DOC	LIVINGSTON	108,240	0.46%	144,515	0.52%
DPS	LIVINGSTON	25,769	0.11%	28,994	0.11%
DNR	MACON	6,238	0.03%	7,946	0.03%
DPS	MACON	42,246	0.18%	47,103	0.17%

RFQ for Energy Performance Contracting Services
Attachment E: TECHNICAL FACILITY PROFILE

Dept	County	NSF	% of Total NSF	GSF	% of Total GSF
DNR	MADISON	3,154	0.01%	3,550	0.01%
DPS	MADISON	16,770	0.07%	19,659	0.07%
DED	MARION	7,160	0.03%	8,561	0.03%
DESE	MARION	32,038	0.14%	35,598	0.13%
DMH	MARION	20,241	0.09%	20,820	0.08%
DPS	MARION	27,147	0.12%	25,978	0.09%
DNR	MCDONALD	4,551	0.02%	5,282	0.02%
DPS	MCDONALD	19,966	0.09%	23,415	0.08%
DPS	MILLER	24,940	0.11%	28,662	0.10%
DNR	MISSISSIPPI	2,432	0.01%	1,626	0.01%
DOC	MISSISSIPPI	334,316	1.43%	533,489	1.94%
DOC	MONITEAU	287,643	1.23%	324,502	1.18%
DNR	MONROE	34,815	0.15%	38,792	0.14%
DNR	MONTGOMERY	4,612	0.02%	5,102	0.02%
DOSS	MONTGOMERY	27,457	0.12%	31,715	0.12%
DNR	MULTIPLE COUNTIES	760	0.00%	894	0.00%
DED	NEW MADRID	1,000	0.00%	1,000	0.00%
DNR	NEW MADRID	34,029	0.15%	37,085	0.13%
DOSS	NEW MADRID	14,046	0.06%	15,665	0.06%
DPS	NEW MADRID	16,987	0.07%	19,914	0.07%
DED	NEWTON	1,310	0.01%	1,310	0.00%
DPS	NEWTON	67,199	0.29%	74,904	0.27%
DOC	NODAWAY	100,722	0.43%	120,976	0.44%
DPS	NODAWAY	49,696	0.21%	53,340	0.19%
DNR	OREGON	66	0.00%	66	0.00%
DPS	PERRY	17,014	0.07%	19,946	0.07%
DED	PETTIS	3,427	0.01%	4,284	0.02%
DESE	PETTIS	15,529	0.07%	17,065	0.06%
DNR	PETTIS	12,582	0.05%	14,701	0.05%
DOA	PETTIS	563,577	2.42%	589,507	2.14%
DPS	PETTIS	39,540	0.17%	44,928	0.16%
DESE	PHELPES	9,011	0.04%	9,902	0.04%
DMH	PHELPES	19,295	0.08%	20,337	0.07%
DNR	PHELPES	49,150	0.21%	50,700	0.18%
DPS	PHELPES	148,089	0.64%	154,982	0.56%
DESE	PIKE	7,500	0.03%	9,600	0.03%
DOC	PIKE	346,140	1.48%	654,864	2.38%
DNR	PLATTE	22,025	0.09%	24,014	0.09%
DPS	PULASKI	11,320	0.05%	11,320	0.04%
DOC	RANDOLPH	446,493	1.91%	521,942	1.89%
DPS	RANDOLPH	27,575	0.12%	31,844	0.12%
DPS	RAY	19,944	0.09%	22,528	0.08%
DNR	REYNOLDS	6,027	0.03%	6,918	0.03%
DESE	RIPLEY	3,379	0.01%	3,754	0.01%
DPS	RIPLEY	15,219	0.07%	17,905	0.06%
DESE	SALINE	16,819	0.07%	20,511	0.07%
DMH	SALINE	620,298	2.66%	660,289	2.40%
DNR	SALINE	51,615	0.22%	58,415	0.21%
DPS	SALINE	22,576	0.10%	26,384	0.10%

RFQ for Energy Performance Contracting Services
Attachment E: TECHNICAL FACILITY PROFILE

Dept	County	NSF	% of Total NSF	GSF	% of Total GSF
DED	SCOTT	5,400	0.02%	6,750	0.02%
DESE	SCOTT	12,496	0.05%	13,684	0.05%
DMH	SCOTT	38,099	0.16%	43,558	0.16%
DPS	SCOTT	30,277	0.13%	34,462	0.13%
DESE	ST CHARLES	23,660	0.10%	26,000	0.09%
DMH	ST CHARLES	43,651	0.19%	64,790	0.24%
DNR	ST CHARLES	10,389	0.04%	10,824	0.04%
DPS	ST CHARLES	16,380	0.07%	32,800	0.12%
DED	ST FRANCOIS	6,715	0.03%	8,394	0.03%
DESE	ST FRANCOIS	4,900	0.02%	6,278	0.02%
DMH	ST FRANCOIS	223,346	0.96%	242,066	0.88%
DNR	ST FRANCOIS	228,097	0.98%	230,357	0.84%
DOC	ST FRANCOIS	1,274,963	5.47%	1,419,782	5.15%
DPS	ST FRANCOIS	30,268	0.13%	34,639	0.13%
DED	ST LOUIS CITY	14,820	0.06%	16,860	0.06%
DESE	ST LOUIS CITY	216,013	0.93%	323,596	1.17%
DMH	ST LOUIS CITY	1,242,822	5.33%	1,414,001	5.13%
DNR	ST LOUIS CITY	22,231	0.10%	26,966	0.10%
DOC	ST LOUIS CITY	140,979	0.60%	154,969	0.56%
DOLIR	ST LOUIS CITY	54,538	0.23%	74,370	0.27%
DOSS	ST LOUIS CITY	159,921	0.69%	177,177	0.64%
DPS	ST LOUIS CITY	348,560	1.49%	518,874	1.88%
OA	ST LOUIS CITY	268,988	1.15%	350,810	1.27%
DMH	ST LOUIS CO	592,363	2.54%	667,182	2.42%
DNR	ST LOUIS CO	124,427	0.53%	128,440	0.47%
DOC	ST LOUIS CO	225,965	0.97%	247,884	0.90%
DOSS	ST LOUIS CO	80,715	0.35%	122,277	0.44%
DPS	ST LOUIS CO	219,514	0.94%	234,198	0.85%
OA	ST LOUIS CO	53,796	0.23%	63,023	0.23%
DNR	STE GENEVIEVE	10,072	0.04%	10,993	0.04%
DPS	STODDARD	67,824	0.29%	72,761	0.26%
DNR	STONE	10,913	0.05%	12,471	0.05%
DOSS	TEXAS	12,006	0.05%	13,625	0.05%
DPS	TEXAS	10,800	0.05%	12,000	0.04%
DESE	VERNON	14,753	0.06%	18,011	0.07%
DMH	VERNON	352,881	1.51%	544,684	1.98%
DPS	VERNON	114,062	0.49%	155,820	0.57%
DPS	WARREN	16,544	0.07%	19,393	0.07%
DESE	WASHINGTON	2,740	0.01%	3,044	0.01%
DNR	WASHINGTON	32,180	0.14%	36,200	0.13%
DOC	WASHINGTON	235,150	1.01%	347,578	1.26%
DNR	WAYNE	24,552	0.11%	28,595	0.10%
DESE	WEBSTER	3,378	0.01%	3,754	0.01%
DOC	WEBSTER	159,543	0.68%	172,688	0.63%
DPS	WRIGHT	8,820	0.04%	10,228	0.04%
Total:		23,317,558		27,554,409	

RFQ for Energy Performance Contracting Services
Attachment F: DRAFT Technical Energy Audit & Project Development Contract

OWNER

OFFICE OF ADMINISTRATION

DIVISION OF FACILITIES MANAGEMENT, DESIGN AND CONSTRUCTION

P. O. BOX 809

JEFFERSON CITY, MISSOURI 65102

PROJECT NO: 00410-02

**AGREEMENT BETWEEN OWNER
AND ESCO
FOR SPECIAL SERVICES**

THIS AGREEMENT, made this «**day**» day of «**month**» in the year of Two Thousand and Five between the Office of Administration, Facilities Management, Design and Construction Division, hereinafter called the Owner

and «**ESCO**»
«**address1**»
«**address2**»

hereinafter called the Energy Services Company (ESCO).

0.1 PROJECT DESCRIPTION

**0.1.1 Title: Various Facilities
Statewide Missouri**

0.2 SCOPE OF WORK

0.2.1 It is the intent of the Owner to

Owner agrees to assist the ESCO in performing the Technical Energy Audit in accordance with the Scope of Work described below. Owner agrees to work diligently to provide full and accurate information. ESCO agrees to work diligently to assess validity of information provided and to confirm or correct the information as needed.

ESCO agrees to offer a Project Development Agreement with a proposal of Energy Performance Contract terms and conditions, based on a recommended package of energy and water saving measures selected by the ESCO. The proposal will include details as specified in the Scope of Work below.

a. **Scope Guidelines and Requirements for the Energy Performance Contract**

- 1) Contract Term. The contract term shall be no greater than 15 years.
- 2) Annual Guaranteed Cost Savings. The annual guarantee is required for the entire term of the contract, however, Owner reserves the option to eliminate the measurement and verification of the guarantee at any time. The guarantee is based on cost savings attributable to all energy saving measures, and must equal or exceed all project costs each year during the contract period. Annual project costs include debt service, contractor fees, maintenance services, monitoring services, and other services.

RFQ for Energy Performance Contracting Services
Attachment F: DRAFT Technical Energy Audit & Project Development Contract

Annual cost savings beyond the guaranteed minimum savings will be held by Owner, and will not be allocated to shortfalls in other years.

- 3) Annual Savings Estimates: The utility and operational and maintenance cost savings for all measures must be estimated for each year during the contract period.

b. **Establish allowable cost and savings factors approved for consideration by Owner.**

Owner will provide ESCO with sufficient guidance to develop savings estimates.

- 1) Allowable sources for savings:
 - a) Energy and water savings
 - b) Owner material/commodity savings, including scheduled replacement of parts
- 2) Sources of savings that can be negotiated:
 - a) Owner deferred maintenance cost
 - b) Offset of future owner capital cost
- 3) Payment sources that are not allowed:
 - a) Owner in-house labor costs.
- 4) The following items may be negotiated:
 - a) Escalation rates for natural gas, electricity, water, material/commodity cost savings, and allowable labor savings. These are rates to be used in cash flow projections for project development purposes. Actual rates and a floor rate may be used in a subsequent performance contract.
 - b) Interest rates (municipal tax-exempt rates for public institutions)
 - c) Owner equity cash outlay (Owner's option)
- 5) The following markup costs are disclosed to provide the Owner with typical project costing approach for a project of similar scope and size. These rates will be used in the Technical Energy Audit and subsequent Energy Performance Contract, however, scope and size of project may change and necessitate a change in the markups provided below.

<u>Cost category</u>	<u>%</u>
Overhead	_____
Profit	_____
_____	_____
_____	_____
_____	_____
_____	_____

<Note: Other possible categories include: Markups on self-performed work, Markups on subcontractors, Markups on equipment/supplies, Design, Construction Management, Commissioning, Guarantee, Warrantee, Monitoring & verification, Contingency, Training, or any other category identified by ESCO.>

c. **Collect data and background information from Owner** concerning facility operation and energy use for the most recent three years from the effective date of this Contract as follows.

- 1) Building square footage.
- 2) Construction data of buildings and major additions
- 3) Utility company invoices
- 4) Occupancy and usage information

RFQ for Energy Performance Contracting Services

Attachment F: DRAFT Technical Energy Audit & Project Development Contract

- 5) Description of all energy-consuming or energy-saving equipment used on the premises, as available.
- 6) Description of energy management procedures utilized on the premises
- 7) Description of any energy-related improvements made or currently being implemented
- 8) Description of any changes in the structure of the facility or energy-using or water-using equipment
- 9) Description of future plans regarding building modifications or equipment modifications and replacements
- 10) Drawings, as available (may include mechanical, plumbing, electrical, building automation and temperature controls, structural, architectural, modifications and remodels)
- 11) Original construction submittals and factory data (specifications, pump curves, etc.), as available
- 12) Operating engineer logs, maintenance work orders, etc., as available
- 13) Records of maintenance expenditures on energy-using equipment, including service contracts
- 14) Prior energy audits or studies, if any

Owner agrees to work diligently to furnish ESCO, upon request, accurate and complete data and information as available. Where information is not available from Owner, ESCO will make a diligent effort to collect such information through the facility inspection, staff interviews, and utility companies.

ESCO agrees to work diligently to assess validity of information provided and to confirm or correct the information as needed.

d. **Perform a facility inspection.**

- 1) Interview the facility manager, maintenance staff or others regarding:
 - a) Facility operation, including energy management procedures
 - b) Equipment maintenance problems
 - c) Comfort problems and requirements
 - d) Equipment reliability,
 - e) Projected equipment needs, etc.
 - f) Occupancy and use schedules for the facility and specific equipment.
 - g) Facility improvements, past and planned
- 2) Inspect major energy-using equipment, including:
 - a) Lighting (indoor and outdoor)
 - b) Heating and heat distribution systems
 - c) Cooling systems and related equipment
 - d) Automatic temperature control systems and equipment
 - e) Air distribution systems and equipment
 - f) Outdoor ventilation systems and equipment
 - g) Exhaust systems and equipment
 - h) Hot water systems
 - i) Electric motors, transmission and drive systems
 - j) Special systems (kitchen/dining equipment, etc.)
 - k) Other energy using systems
 - l) Water consuming systems (restroom fixtures, water fountains, irrigation systems, etc.)
- 3) Perform "late-night" surveys outside of normal business hours or on weekends to confirm building system and occupancy schedules, if deemed necessary.

RFQ for Energy Performance Contracting Services

Attachment F: DRAFT Technical Energy Audit & Project Development Contract

- 4) Develop a preliminary list of potential energy and water saving measures. Consider the following for each system:
 - a) Comfort and maintenance problems
 - b) Energy use, loads, proper sizing, efficiencies and hours of operation
 - c) Current operating condition
 - d) Remaining useful life
 - e) Feasibility of system replacement
 - f) Hazardous materials and other environmental concerns
 - g) Owner's future plans for equipment replacement or building renovations
 - h) Facility operation and maintenance procedures that could be affected

Owner will allow ESCO reasonable access to facility staff to ensure understanding of existing systems and opportunities.

ESCO agrees to work diligently to assess validity of information provided and to confirm or correct the information as needed.

e. **Establish base year consumption and reconcile with end use consumption estimates.**

- 1) Examine utility bills for the past 3 years and establish base year consumption for electricity, gas, steam, water, etc. in terms of energy units (kWh, kW, ccf, Therms, gallons, or other units used in bills) and in terms of dollars and in terms of dollars per square foot. Describe the process used to determine the base year (averaging, selecting most representative contiguous 12 months, etc.). Consult with facility personnel to account for any anomalous schedule or operating conditions on billings that could skew the base year representation. ESCO will account for periods of time when equipment was broken or malfunctioning in calculating the base year.
- 2) Estimate loading, usage and/or hours of operation for all major end uses of total facility consumption including, but not limited to:
 - a) Lighting
 - b) Heating
 - c) Cooling
 - d) HVAC motors (fans and pumps)
 - e) Plug loads
 - f) Kitchen equipment
 - g) Other/miscellaneous

Where loading or usage are highly uncertain (including variable loads such as cooling), ESCO will use its best judgment, spot measurements or short-term monitoring. ESCO should not assume that equipment run hours equal the operating hours of the building(s) or facility staff estimates.

- 3) Reconcile annual end-use estimated consumption with the annual base year consumption. This reconciliation will place reasonable "real-world" limits on potential savings.
- 4) Propose adjustments to the baseline for energy and water saving measures that will be implemented in the future and that will remain separate from the Energy Performance Contract.

f. **Develop a preliminary analysis of potential energy and water saving measures.**

This list shall be compiled and submitted to Owner within **<days>** of the execution of this Contract.

- 1) List all potential opportunities, whether cost-effective or not.

RFQ for Energy Performance Contracting Services

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- 2) Identify measures which appear likely to be cost effective and therefore warrant detailed analysis
 - 3) For each measure, prepare a preliminary estimate of energy or water cost savings including description of analysis methodology, supporting calculations and assumptions used to estimate savings.
- g. **Meet with Owner to present preliminary findings** prior to thorough analysis. Describe how the projected project economics meet the owner's terms for completing the Technical Energy Audit and Project Development Contract. Discuss assessment of energy use, savings potential, retrofit opportunities, and potential for developing an energy performance contract. Develop a list of recommended measures for further analysis. The Owner's rejection of calculations of savings, potential savings allowed, or retrofit recommendation shall be at the risk of the ESCO.
- h. **Analyze savings and costs for each energy and water saving measure.**
- 1) Consider technologies in a comprehensive approach including, but not limited to: lighting systems, heating/ventilating/air conditioning equipment and distribution systems, controls systems, building envelope, motors, kitchen equipment, or other special equipment, irrigation, water saving devices.
 - 2) Follow the methodology of ASHRAE or other nationally-recognized authority and be based on the engineering principle(s) identified in the description of the retrofit option
 - 3) Utilize assumptions, projections and baselines which best represent the true value of future energy or operational savings. Include accurate marginal costs for each unit of savings at the time the audit is performed, documentation of material and labor cost savings, adjustments to the baseline to reflect current conditions at the facility, calculations which account for the interactive effects of the recommended measures.
 - 4) Use best judgement regarding the employment of instrumentation and recording durations so as to achieve an accurate and faithful characterization of energy use.
 - 5) Develop a preliminary measurement and verification plan for each measure.
 - 6) Follow additional guidelines for analysis and report preparation given below.
 - 7) Include cost to provide services and complete application for Energy Star Label.
- i. **Prepare a draft "Technical Energy Audit" report.** The primary purpose of the report is to provide an engineering and economic basis for negotiating a potential Energy Performance Contract between the Owner and the ESCO. The report shall be completed within **<days>** of the date of execution of this Contract. The report shall include:
- 1) Overview
 - a) Contact information
 - b) Summary table of recommended energy and water saving measures, with itemization for each measure of design and construction cost, annual maintenance costs, the first year cost avoidance (in dollars and energy units), simple payback and equipment service life
 - c) Summary of annual energy use and costs of existing or base year condition
 - d) Description of the existing facility, mechanical and electrical systems
 - e) Summary description of measures, including estimated costs and savings for each as detailed above
 - f) Calculation of cost savings expected if all recommended measures are implemented. Include total percentage savings.
 - g) Discussion of measures considered but not investigated in detail
 - h) Conclusions and recommendations
 - 2) Base year energy use
 - a) Description and itemization of current billing rates, including schedules.

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- b) Summary of all utility bills
- c) Base year consumption and description of how established
- d) End use reconciliation with base year (include discussion of any unusual findings)
- 3) Full description of each energy and water saving measure including:
 - a) Written description
 - (1) Existing conditions
 - (2) Recommendations. Include discussion of facility operations and maintenance procedures that will be affected by installation/implementation. Present the plan for installing or implementing the recommendation.
 - b) Savings calculations
 - (1) Base year energy use and cost
 - (2) Post-retrofit energy use and cost
 - (3) Savings estimates including analysis methodology, supporting calculations and assumptions used.
 - (4) Annual savings estimates. The cost savings for all energy saving measures must be estimated for each year during the contract period. Savings must be able to be achieved each year (cannot report average annual savings over the term of the contract).
 - (5) Savings estimates must be limited to savings allowed by the Owner as described above.
 - (6) Percent cost-avoidance projected
 - (7) Description and calculations for any proposed rate changes
 - (8) Explanation of how savings interactions between retrofit options is accounted for in calculations.
 - (9) Operation and maintenance savings, including detailed calculations and description. Ensure that maintenance savings are only applied in the applicable years and only during the lifetime of the particular equipment.
 - (10) If computer simulation is used, include a short description and state key input data. If requested by Owner, access will be provided to the program and all assumptions and inputs used, and/or printouts shall be provided of all input files and important output files and included in the Technical Energy Audit with documentation that explains how the final savings figures are derived from the simulation program output printouts
 - (11) If manual calculations are employed, formulas, assumptions and key data shall be stated.
 - (12) Conclusions, observations, caveats
 - c) Cost estimate -- detailed scope of the construction work needed, suitable for cost estimating. Include all anticipated costs associated with installation and implementation.
 - (1) Engineering/design costs
 - (2) Contractor/vendor estimates for labor, materials, equipment; include special provisions, overtime, etc., as needed to accomplish the work with minimum disruption to the operations of the facilities.
 - (3) Permit costs
 - (4) Construction management fees
 - (5) Environmental costs or benefits (disposal, avoided emissions, handling of hazardous materials, etc.).
 - (6) Conclusions, observations, caveats.
 - d) Other
 - (1) Estimate of average useful service life of equipment
 - (2) Preliminary commissioning plan

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- (3) Preliminary measurement and verification plan, explaining how savings from each measure is to be measured and verified (stipulated by Contract, utility bill analysis, end-use measurement and calculation, etc.)
 - (4) Discussion of impacts that facility would incur after contract ends. Consider operation and maintenance impacts, staffing impacts, budget impacts, etc.
 - (5) Compatibility with existing systems.
 - 4) Complete appendices that document the data used to prepare the analyses. Describe how data were collected.
- j. **Meet with Owner**: to review to draft audit.
- k. **Revise Audit as directed by Owner**.
- l. **Prepare a proposed Project Development Agreement** in anticipation of ESCO and Owner entering into an Energy Performance Contract to design, install, and monitor the energy and water saving measures proposed in the Technical Energy Audit.
 - 1) Project Cost is the total amount Owner will pay for the project and ESCO's services. Costs may include but are not limited to:
 - a) Engineering, designing, packaging, procuring, installing (from Technical Energy Audit Report results)
 - b) Financing (based on interest rates likely available to Owner at this time)
 - c) Performance/payment bond costs
 - d) Construction management fees
 - e) Commissioning costs
 - f) Maintenance fees
 - g) Monitoring fees
 - h) Training fees
 - i) Legal services
 - j) Overhead and profit
 - k) Other markups
 - 2) Include a List of Services that will be provided as related to each cost.
- m. **Prepare a preliminary analysis of energy performance contract terms** to include:
 - List of energy and water saving measures included in recommended package.
 - Interest rate used in the analysis.
 - Expected contract term (in number of years).
 - Analysis of annual cashflow for Owner during the contract term.
 - Explanation of how savings will be calculated and adjusted due to weather (such as heating or cooling degree days), occupancy changes or other factors.

0.3 COMPENSATION

THE ESCO shall provide professional services for this Project in accordance with the Terms and Conditions of this Agreement and THE OWNER shall compensate the ESCO, in accordance with the Terms and Conditions of this Agreement, as follows:

- 0.3.1 Owner shall compensate ESCO for performance of the Audit by payment to ESCO of **<Audit Cost Amount>**.
- 0.3.2 Owner shall have no payment obligations at the time of execution of this Contract, but acknowledges that the fee indicated above shall be incorporated into ESCO's project costs, in

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the event ESCO and Owner execute an Energy Performance Contract within **<days>** calendar days, or such longer period as the parties may mutually agree, after submission of the final Technical Energy Audit report and Project Development Contract by ESCO to Owner.

- 0.3.3 Should the ESCO determine any time during the Technical Energy Audit that savings cannot be attained to meet Owner's terms, the Technical Energy Audit will be terminated by written notice of the ESCO to the Owner. In this event this Contract shall be cancelled and Owner shall have no obligation to pay, in whole or in part, the amount specified.
- 0.3.4 Owner shall have no payment obligations under this Contract in the event that ESCO's final Technical Energy Audit report does not contain a package of energy and water saving measures, which if implemented, will provide the owner with cash savings to meet the following terms: Sufficient to fund Owner's payments of all costs and fees associated with the Energy Performance Contract, including any annual fees to the ESCO. Analysis will be based on ESCO's proposed financing terms or through the Owner's Master Lease, including a conventional, fully amortizing lease-purchase agreement over a fixed 15 year maximum term with a fixed rate of interest actually available to Owner.

0.4 ESCO'S PAYMENT SCHEDULE

- 0.4.1 Payments for ESCO's Special Services shall be made as follows:

Except as provided for above in section 0.3, within **<days>** calendar days after ESCO's submission of the final Technical Audit report, Owner shall pay the entire cost as listed above in section 0.3.1.

0.4.2 PAYMENTS, SUMS WITHHELD

The Owner's Representative reserves the right to withhold payments to the ESCO for losses connected with the Project caused by the errors, omissions, or wrongful acts of the ESCO in performing his duties under this Agreement. Upon receipt of written notice of the Owner's Representative's intention to withhold payments, the ESCO may request the Owner's Representative to instead seek payment against the ESCO's insurer by notifying the Owner's Representative by certified mail, within seven days of receiving the notice of intent to withhold payments. The ESCO's failure to contact the Owner's Representative shall be deemed a waiver of this option. In no event shall the withholding of payments under the terms and conditions of this paragraph be deemed or construed as a waiver or abrogation of the Owner's Representative's right to pursue payment or redress for any claim it may have against the ESCO under this Agreement. No deductions shall be made from the ESCO's compensation on account of penalty, liquidated damages, or other sums withheld from payments to contractors.

0.5 ESCO'S PROJECT COMPLETION SCHEDULE

- 0.5.1 ESCO agrees to perform a Technical Energy Audit in accordance with the Scope of Work described below. ESCO agrees to complete the Technical Energy Audit and present to Owner a final report within **<days>** calendar days from the execution of this Contract.

0.6 MBE/WBE PARTICIPATION

- 0.6.1 ESCO agrees to MBE participation by team members of **<percent>** % and WBE participation by team members of **<percent>** %.

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0.7 SUPPLEMENTAL DOCUMENTS

0.7.1 THIS AGREEMENT, by this specific reference, shall include the following supplemental documents:

Terms and Conditions of Special Services Agreement Between Owner and ESCO consisting of 2 pages.

0.8 EXTENT OF AGREEMENT

0.8.1 THIS AGREEMENT represents the entire and integrated agreement between the Owner and the ESCO and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and ESCO.

APPROVED:

Dave Mosby
Director
Facilities Management, Design and Construction Division

Firm Name

Signature of Firm's Owner

Mailing Address

City, State, Zip

ATTEST:

Corporate Secretary

CORPORATE SEAL:

Project No. 00410-02

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TERMS AND CONDITIONS OF SPECIAL SERVICES
AGREEMENT BETWEEN OWNER AND ESCO

1.0 ESCO'S RESPONSIBILITIES

- 1.1 The ESCO agrees to accept the Owner's program and budget and further agrees to use reasonable skill and care to accomplish said Project within the intent of the program and established budget. In the event the ESCO determines that the Project cannot be accomplished to provide the required savings, he shall notify in writing the Owner's Representative so that the Project scope can be reviewed and modified if necessary.
- 1.2 The ESCO shall use reasonable care to verify that all relevant information supplied to him by the Owner or Owner's Representative is correct and accurate.

2.0 OWNER'S RESPONSIBILITIES

- 2.1 Owner shall provide information regarding his requirements for the Project as well as information required of him in order to promote the orderly progress of the Work.
- 2.2 If the Owner observes or otherwise becomes aware of any fault or defect in the Project or nonconformance with the Contract Documents, he shall give prompt written notice thereof to the ESCO.
- 2.3 All of the above items relating to Owner's responsibilities shall in no way abrogate the ESCO's responsibility.

3.0 CONTRACT CHANGES

- 3.1 ESCO Contract Changes shall be provided only upon prior written authorization by the Owner's Representative and shall be paid for by the Owner as herein before provided in of this Agreement.
- 3.2 Direct costs which may be in addition to the compensation for Special Services may include, but are not necessarily limited to the following:
- 3.2.1 Printing costs associated with the Project.

- 3.2.2 Meals, lodging and transportation expenses incurred while traveling in connection with the Project.
- 3.2.3 Long distance telephone calls and telegrams made in connection with the Project.
- 3.2.4 The cost of other services requested by the Owner and performed by the ESCO.
- 3.3 The ESCO shall be paid only for those costs set out under Compensation for Contract Changes in this Agreement. Payment for said services shall be at direct cost to the ESCO unless specifically set out otherwise in this Agreement.

4.0 ESCO'S ACCOUNTING RECORDS

- 4.1 Records and receipts of the ESCO's Direct Personnel, ESCO and costs pertaining to the Project shall be kept on a generally recognized accounting basis and shall be available to the Owner or his authorized representatives upon request. The Owner's Representative reserves the right to withhold payment of any amounts owed to the ESCO unless or until said records and receipts are received and verified by him when requested.

5.0 OWNER'S REPRESENTATIVE

- 5.1 For the purposes of this agreement, the Director, Facilities Management, Design and Construction Division, shall serve as the Owner's Representative. No work will be accepted, nor any payments made without approval by both the Owner and the Owner's Representative.

6.0 ESCO'S COOPERATION

- 6.1 The ESCO agrees to perform his services under this Contract in such a manner and at such times so that the Owner and/or any contractor who has Work to perform, or Contracts to execute, can do so without unreasonable delay.

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7.0 OWNERSHIP OF DOCUMENTS

- 7.1 All documentation generated as an instrument of service is and shall remain the property of the Owner whether the Project for which it is prepared is continued or not. It may be used by the Owner on another like Project without approval of, or additional compensation to, the ESCO, provided that the Owner accepts professional architectural and engineering responsibility for any such additional use.

8.0 SUCCESSORS AND ASSIGNS

- 8.1 The Owner and the ESCO each binds himself, his partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. The ESCO shall not assign, sublet or otherwise transfer his interest in this Agreement without the written consent of the Owner.

9.0 DISPUTES AND DISAGREEMENTS

- 9.1 In order to prevent all disputes or disagreements between the parties to this Agreement in relation to the performance on the part of the ESCO, it is expressly agreed and understood that in case any controversy or difference of opinion shall arise between the parties as to quality, quantity or value of the Work, the decision of the Director, Facilities Management, Design and Construction Division, shall be final and binding on all parties. Nothing contained herein shall be interpreted to restrict either party's right to pursue litigation.

10.0 TERMINATION

- 10.1 This Agreement may be terminated by the Owner's Representative upon mailing notice of termination to the ESCO at least seven (7) working days in advance of the date of termination if the ESCO

substantially fails to perform according to the terms and conditions of this Agreement in the opinion of the Owner's Representative or funds for the Project are not appropriated or are insufficient to proceed with the Project. The Owner's Representative may also terminate this Agreement by the same procedure at the end of any Phase or part thereof as set forth in this Agreement. In the event of termination, the ESCO shall be paid compensation for services performed up until the date of termination subject to amounts withheld to satisfy any rightful claim or set-off by the Owner.

ENERGY PERFORMANCE CONTRACT

This Purchase Agreement for Energy Conservation Equipment (the "Agreement" or "Contract") is made and entered into as of this day of **<date>**, by and between the Office of Administration, Facilities Management, Design and Construction Division (Owner) and **<name of energy service company (ESCO)>** ("ESCO"), a **<name of state where headquarters is located>** company doing business in Missouri, for the purpose of the sale and installation of certain energy saving equipment ("Equipment"), described in **Schedule A (Equipment to Be Installed by ESCO)** and provision of other services described in **Schedule D (ESCO Monitoring, Maintenance and Service Agreement)** designed to save energy and reduce related costs for certain property and buildings owned by the Owner (the "Premises") as described in **Schedule B (Description of the Premises; Pre-Existing Equipment Inventory)**.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and intending to be legally bound hereby, Owner and ESCO hereto covenant and agree as follows:

SECTION 1: PURCHASE AND SALE

SECTION 1.1. Purchase and Sale. Owner agrees to purchase and ESCO agrees to provide the Equipment, together with installation, maintenance and other services as provided herein, on the terms and conditions of this Agreement.

The agreed to Contract Sum for the Work is \$ **<Cost>**. The Contract Sum will be equal to the sum of all materials, labor, auditing, design, engineering, project management fees, and all other services. ESCO will provide the work identified on **Schedule A (Equipment to be Installed by ESCO)**, and the services detailed on **Schedule D (ESCO Monitoring, Maintenance and Service Agreement)**. ESCO shall supervise and direct the Work and shall be solely responsible for all construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work under this Agreement. ESCO shall be responsible to pay for all labor, materials, equipment, tools, construction equipment and machinery, transportation and other facilities and services necessary for the proper execution and completion of the Work.

SECTION 1.2 Prevailing Wage The ESCO shall pay not less than the hourly rate of wages as determined by the Department of Labor and Industrial Relations, State of Missouri, in accordance with Section 290.210 through 290.340 RSMo.

SECTION 1.3 Financing No public financing (i.e. bonds, certificates of participation, etc.), whereby the state's contract payments with the ESCO is pledged for the payment of debt service, will be allowed.

SECTION 2. ENERGY MANAGEMENT PLAN

SECTION 2.1. Plan Details. ESCO has prepared a complete Technical Energy Audit, dated **<date>** which has been approved and accepted by Owner as set forth in **Exhibit II (Certificate of Acceptance – Technical Energy Audit)**.

SECTION 2.2. Schedules, Exhibits and Appendices. This Agreement incorporates and makes a part hereof certain Schedules and Exhibits listed in **Section 39 (Schedules and Exhibits)** of this

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Agreement which determines the precedence of the Schedules and Exhibits relative to each other and to this Agreement in the event of conflict. Notwithstanding, the provisions of this Agreement and the attached Schedules shall govern in the event of any inconsistencies between the Technical Energy Audit and the provisions of this Agreement.

SECTION 2.3. Other Documents. This Contract incorporates herein and makes a part hereof the General Conditions set forth in **Schedule N (General Conditions)** and Special Provisions as set forth in **Section 37 (Special Provisions)**, as well as the entire RFP and ESCO Proposal for this Project labeled **Appendix A (RFP for ESCO Solicitation)** and **Appendix B (ESCO Proposal)** respectively. Acceptance by the Owner of the Technical Energy Audit is reflected in **Exhibit II (Certificate of Acceptance—Technical Energy Audit)**. Notwithstanding, the provisions of this Contract and the attached Schedules shall govern in the event of any inconsistencies between the Technical Energy Audit and the provisions of this Contract.

SECTION 3. ENERGY USAGE RECORDS AND DATA

SECTION 3.1. Energy Usage Records and Data. Owner has furnished and shall continue to furnish (or authorize its energy suppliers to furnish) during the Term of this Agreement to ESCO, upon its request, all of its records and complete data concerning energy and water usage and related maintenance for the Premises.

SECTION 4. TIME FOR COMPLETION; COMMENCEMENT DATE; TERM OF AGREEMENT

SECTION 4.1. Construction Commencement Date and Time for Completion of Work. Work must commence within twenty (20) work days of execution of this Contract and shall be completed as set forth in **Schedule G (Construction and Installation Schedule)**. The Time for Completion of Work is of the essence of this Contract. By executing this Contract, the parties hereto confirm the Time of Completion of Work is a reasonable period for performing the Work. If ESCO is delayed at any time in progress of the Work by an act or neglect of Owner or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond ESCO control, then the Time for Completion of the Work shall be extended by Contract Change, for such reasonable time as the parties hereto may determine.

SECTION 4.2. Performance Commencement Date. The Performance Commencement Date shall be the first day of the month after the month in which all schedules are in final form and accepted by Owner, and when ESCO shall have delivered a Notice to Owner that it has installed and commenced operating all of the Equipment specified in **Schedule A (Equipment to be Installed by ESCO)** and in accordance with the provisions of **Section 12 (Construction Installation by ESCO)** and **Schedule H (Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment)**, and Owner has inspected and accepted said installation and operation as evidenced by the Certificate of Acceptance as set forth in **Exhibit III (Certificate of Acceptance—Installed Equipment)**. Notwithstanding anything in **Section 4 (Time for Completion; Performance Commencement Date; Term of Agreement)** and **Section 5 (Payments)** to the contrary, the Performance Commencement Date shall not occur and the Owner shall not be required to accept the work under this Agreement unless and until: (i) all Equipment installation for the subject Premises is completed by ESCO in accordance with the terms and conditions of this Agreement, including without limitation the satisfaction of all claims for labor and materials. Owner shall have twenty (20) work days after notification by the ESCO to inspect and accept the Equipment. The Owner reserves the right to reject the Equipment if installation fails to meet reasonable standards of workmanship, does not comply with applicable building codes, or is otherwise not in compliance with this Agreement.

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SECTION 4.3. Performance Term of Agreement. Unless otherwise terminated pursuant to the terms of this Agreement, the Performance Term of this Agreement shall begin with the Performance Commencement Date and continue for a maximum of 15 years if the cost-weighted average lifetime of the equipment exceeds the financing term. This Agreement shall be effective and binding upon the parties immediately upon its execution. The period from contract execution until the Performance Commencement Date shall be known as the "Interim Period". All Energy and Cost Savings achieved during the interim period will be fully credited to Owner and shall not be considered as Energy and Cost Savings provided under the ESCO Energy and Cost Savings Guarantee.

SECTION 5. PAYMENTS

Add original 5.1 if using third party

SECTION 5.1. ESCO Compensation and Fees. Owner shall pay ESCO the Contract Sum in accordance with **Schedule O (Payment Schedule and Schedule of Values)**. Payments will be made on a progress payment basis for work completed and accepted by the Owner. A retainage of 5% will be withheld from each payment until the Work is complete and Owner executes the Certificate of Acceptance as set forth in **Exhibit III (ii) (Certificate of Acceptance—Installed Equipment)**.

<Section Overview & Comments: If the Owner is using a third-party lease financing structure the ESCO will receive 100% of the Contract Sum from the Owner once the Certificate of Acceptance is signed. The payments to the ESCO during the Interim Period can be drawn down by the ESCO from the proceeds of the lease through an Escrow account set up by the leasing company. The Owner should require a retainage be withheld from the ESCO until the Certificate of acceptance is executed at which time final payment can be made. If the ESCO is financing the project this Section 5.1 should be modified such that the ESCO Compensation and Fees will be based on the actual verified energy savings over the Performance Term.>

SECTION 5.2. ESCO Monitoring Fees. Throughout the Term of this Agreement, or until the ESCO Monitoring, Maintenance and Service Agreement is cancelled by Owner, Owner shall pay the ESCO an annual fee according to **Schedule D (ESCO Monitoring, Maintenance and Service Agreement)** for monitoring the Energy and Cost Savings. Annual guaranteed Energy and Cost savings achieved shall be sufficient to cover any and all fees to be paid to ESCO for the provisions of **Schedule D (ESCO Monitoring, Maintenance and Service Agreement)**.

SECTION 5.3. Energy and Cost Savings Guarantee. Subsequent to the Performance Commencement Date and throughout the Term of this Agreement, ESCO hereby guarantees the level of Annual Energy and Cost Savings as detailed in **Schedule C (Energy and Cost Savings Guarantee)**. The guarantee shall remain in effect for the performance period. The measurement and verification of the guarantee shall be optional for Owner after each year hereafter, however the annual cost savings will meet or exceed the annual payments by the Owner to lease the Equipment each year for the duration of the contract term.

This guarantee is achieved as a result of the installation and operation of the Equipment and provision of services provided for in this Agreement as specified in **Schedule D (ESCO's Monitoring, Maintenance and Service Agreement)** and in accordance with the Savings Calculation Formula as set forth in **Schedule F (Savings Measurement and Calculation Formulae; Methodology to Adjust Baseline)**. This Energy and Cost Savings Guarantee is subject to the satisfactory performance by Owner of all its obligations under this Agreement including, without limitation, adjustment in accordance with **Section 18 (Material Changes)** hereunder. In the event this

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Agreement is terminated due to an uncured Event of Default by Owner, this Energy and Cost Savings Guarantee shall be cancelled.

ESCO has structured the Energy and Cost Savings Guarantee to be sufficient to exceed any and all annual payments required by the Owner in connection with the acquisition of Equipment to be installed by ESCO under this Contract and the Owner's lease financing obligations. Actual energy and operations savings achieved by ESCO through the operation of Equipment and performance of services by ESCO shall be sufficient to cover any and all annual fees to be paid by Owner to ESCO for the provision of services as set forth and in accordance with the provisions of **Schedule D (ESCO Monitoring, Maintenance and Service Agreement)** and **Schedule O (Annual Installment Payment Schedule)**.

SECTION 5.4. Annual Review and Reimbursement/Reconciliation. Energy-related cost savings shall be measured and/or calculated as specified in **Schedule E (Baseline Energy Consumption)** and **Schedule F (Savings Measurement and Calculation Formulae; Methodology to Adjust Baseline)** and a report provided within thirty (30) work days of each anniversary of the Performance Commencement Date. ESCO has developed the measurement and verification procedures specified in **Schedule F (Savings Measurement and Calculation Formulae; Methodology to Adjust Baseline)** to comply with the requirements of the International Performance Measurement and Verification Protocol 2000.

In the event the Energy and Cost Savings achieved during such twelve-month period is less than the Guaranteed Energy and Cost Savings during the years the guarantee is in effect, ESCO shall pay the Owner an amount equal to the deficiency

If during any twelve-month period the Energy and Cost Savings achieved are greater than the Guaranteed Energy and Cost Savings, such excess Cost Savings shall be retained by the Owner.

SECTION 5.5. Allowable Sources of Savings. Owner has pre-determined allowable payment sources to be applied to annual payments, as follows:

The following payment sources will be allowed:

- Energy and water cost savings
- Material/commodity savings including avoided costs such as lamp and ballast replacements, scheduled replacement of parts, etc. (only for the years that these savings are applicable).
- Maintenance cost savings such as terminated service contracts on equipment.

During negotiations, Owner may consider savings to include the following:

- Owner deferred maintenance cost
- Offset of future owner capital cost
- Labor cost savings, in-house

Any cost savings related to maintenance and operation of the facilities will be rigorously reviewed and, if agreed to, will be limited to those that can be thoroughly documented and approved by Owner.

SECTION 5.6. Capital Contribution from Owner. Owner elects to contribute **\$0** to pay for part of the initial cost.

SECTION 5.7. Monitoring Information Procedure. Energy and Cost Savings shall be calculated each month in the following manner:

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- (i) By the **<number of days -- 30th>** calendar day after receipt, Owner shall provide ESCO with copies of all energy bills for the Premises that it shall have received for the preceding month;
- (ii) Upon receipt of the required information, ESCO shall calculate the savings in accordance with the agreed-upon calculation formulae in **Schedule F (Savings Measurement and Calculation Formulae; Methodology to Adjust Baseline)**.

SECTION 5.8. Late Payment. Payment due either party hereunder shall be due and payable within thirty (30) calendar days of the owner's approved date. Interest shall accrue on any past due balance owed to either party hereunder at the rate of one percent (1.5%) per month (or the highest rate not prohibited by law, whichever is lower). This remedy shall be in addition to, and not exclusive of, any other remedy available under this Agreement or applicable law.

SECTION 5.9. Effective Date of Payment Obligation. Notwithstanding the above provisions in **Section 4 (Time for Completion; Performance Commencement Date; Term of Agreement)**, Owner shall not be required to begin any payments to ESCO under this Contract unless and until all equipment installation is completed by ESCO in accordance with the provisions of **Section 9 (Acceptance Testing)**, **Section 12 (Construction and Installation by ESCO)** and **Schedule H (Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment)**, and accepted by Owner as evidenced by the signed Certificate of Acceptance as set forth in **Exhibit III (Certificate of Acceptance—Installed Equipment)**, and unless and until said equipment is fully and properly functioning.

SECTION 5.10. MBE/WBE Participation. ESCO agrees to MBE participation by team members of **<percent>** % and WBE participation by team members of **<percent>** %.

SECTION 6. MODIFICATION OF EQUIPMENT

SECTION 6.1. Modification of Equipment. During the Term of this Agreement, Owner will not, without the prior written consent of ESCO, affix or install any accessory equipment or device on any of the Equipment if such addition will change or impair the originally intended functions, value or use of the Equipment without ESCO's prior written approval, which shall not be unreasonably withheld.

SECTION 7. UPGRADING OR ALTERING THE EQUIPMENT

SECTION 7.1. Upgrading or Altering the Equipment. ESCO shall at all times have the right, subject to Owner's prior written approval, which approval shall not be unreasonably withheld, to change the Equipment, revise any procedures for the operation of the equipment or implement other energy saving actions in the Premises, provided that:

- (i) the ESCO complies with the standards of comfort and services set forth in **Schedule I: (Standards of Comfort)** herein;
- (ii) such modifications or additions to, or replacement of the Equipment, and any operational changes, or new procedures are necessary to enable the ESCO to achieve the Energy and Cost Savings at the Premises and;

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- (iii) any cost incurred relative to such modifications, additions or replacement of the Equipment, or operational changes or new procedures shall be the responsibility of the ESCO.

All modifications, additions or replacements of the Equipment or revisions to operating or other procedures shall be described in a supplemental Schedule(s) to be provided to the Owner for approval, which shall not be unreasonably withheld, provided that any replacement of the Equipment shall be new and have equal or better potential to reduce energy consumption at the Premises than the Equipment being replaced. The ESCO shall update any and all software to be used in connection with the Equipment in accordance with the provisions of **Section 14.1 (Ownership of Certain Proprietary Rights)** of **Schedule J (ESCO's Maintenance Responsibilities)**. All replacements of and alterations or additions to the Equipment shall become part the Equipment described in **Schedule A (Equipment to be Installed by ESCO)** and shall be covered by the provisions and terms of **Section 9 (Acceptance Testing)** and **Section 12 (Construction and Installation by ESCO)**.

SECTION 8. ENVIRONMENTAL REQUIREMENTS

SECTION 8.1. Excluded Material and Activities. Owner recognizes that in connection with the installation and/or service or maintenance of Equipment at Owner's Premises, ESCO may encounter, but is not responsible for, any work relating to (i) asbestos, materials containing asbestos, or the existence, use, detection, removal, containment or treatment thereof, or (ii) pollutants, hazardous wastes, hazardous materials, contaminants other than those described in this Section below (collectively "Hazardous Materials"), or the storage, handling, use, transportation, treatment, or the disposal, discharge, leakage, detection, removal, or containment thereof. The materials and activities listed in the foregoing sentence are referred to as "Excluded Materials and Activities". Owner agrees that if performance of work involves any Excluded Materials and Activities, Owner will perform or arrange for the performance of such work and shall bear the sole risk and responsibility therefore. In the event ESCO discovers Hazardous or Excluded Materials, ESCO shall immediately cease work, remove all ESCO personnel or subcontractors from the site, and notify the Owner. The Owner shall be responsible to handle such Materials at its expense. ESCO shall undertake no further work on the Premises except as authorized by the Owner in writing. Notwithstanding anything in this Agreement to the contrary, any such event of discovery or remediation by the Owner shall not constitute a default by the Owner. In the event of such stoppage of work by ESCO, the Time for Completion of Work will be automatically extended by the amount of time of the work stoppage.

SECTION 8.2. Polychlorinated Biphenyl (PCB) Ballasts; Mercury Lamps.

ESCO has entered into an agreement with an approved PCB ballast disposal ESCO who will provide an informational packet, packing receptacles and instructions, labels and shipping materials, transportation, recycling, and incineration services for PCB ballasts. All capacitors and asphalt potting compound materials removed from Owner's PCB ballasts will be incinerated in a federally approved facility. Certificate of Destruction will be provided to Owner. ESCO's responsibility shall be for the proper and legal management of any PCB ballasts generated as a result of the installation of the Equipment only until they are loaded onto an approved PCB ballast disposal ESCO's vehicle for transportation.

ESCO has entered into an agreement with an approved lamp disposal contractor who will provide approved containers, materials required to label, transportation, recycling in accordance with EPA requirements, and a copy of the manifest.

Owner agrees to sign manifests of ownership for all PCB ballasts and mercury lamps removed from the Premises.

SECTION 8.3. Refrigerants. ESCO shall be responsible for the proper removal and disposal of any refrigerants encountered in any equipment being removed or modified as part of this contract.

SECTION 9. ACCEPTANCE TESTING

SECTION 9.1. Modification of Schedules. To ensure this Agreement and its Schedules properly account for as-installed conditions, which conditions may vary from the pre-installation analyses, the ESCO shall re-validate or modify the Schedules.

SECTION 9.2. Systems Startup and Equipment Commissioning. The ESCO shall conduct a thorough and systematic performance test of each element and total system of the installed Equipment in accordance with the procedures specified in **Schedule H (Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment)** and prior to acceptance of the project by Owner as specified in **Exhibit III (Certificate of Acceptance—Installed Equipment)**. Testing shall be designed to determine if the Equipment is functioning in accordance with both its published specifications and the Schedules to this Agreement, and to determine if all building systems, subsystems or components are functioning properly within the new integrated environment. The ESCO shall provide notice to the Owner of the scheduled test(s) and the Owner and/or its designees shall have the right to be present at any or all such tests conducted by ESCO and/or manufacturers of the Equipment. The ESCO shall be responsible for correcting and/or adjusting all deficiencies in systems and Equipment operations that may be observed during system commissioning procedures and during system testing procedures. Prior to Owner acceptance ESCO shall also provide Owner with satisfactory documentary evidence that the Equipment installed is the Equipment specified in **Schedule A (Equipment to Be Installed by ESCO)**.

SECTION 10. EQUIPMENT WARRANTIES

SECTION 10.1. Equipment Warranties. ESCO warrants that all equipment sold and installed, as part of this Agreement is new, will be free from defects in materials or workmanship, will be installed properly in a good and workmanlike manner, and will function properly for a period of one (1) year from the date of the **Certificate of Acceptance-Installed Equipment (Exhibit III)** for the particular energy conservation measure. After the warranty period, ESCO shall have no responsibility for performing maintenance, repairs, or making manufacturer warranty claims relating to the Equipment, except as provided in **Schedule D (ESCO Monitoring, Maintenance and Service Agreement)**.

ESCO further agrees to assign to Owner all manufacturer's warranties relating to the Equipment and to deliver such written warranties and which shall be attached and set forth as **Exhibit V (Equipment Warranties)**; to pursue rights and remedies against manufacturer and ESCO of the equipment under the warranties in the event of equipment malfunction or improper or defective function, and defects in parts, workmanship and performance, to notify the Owner whenever defects in equipment parts or performance occur which give rise to such rights and remedies and those rights and remedies are exercised by ESCO. The cost of any risk of damage or damage to the equipment and its performance, including damage to property and equipment of the Owner or the Premises, due to ESCO's failure to exercise its warranty rights shall be borne solely by ESCO.

All warranties shall be transferable and extend to the Owner. The warranties shall specify that only new, not reconditioned, parts may be used and installed when repair is necessitated by malfunction.

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Notwithstanding the above, nothing in this Section shall be construed to alleviate/relieve the ESCO from complying with its obligations to perform under all terms and conditions of this Contract and as set forth in all attached Schedules.

SECTION 11. PERMITS AND APPROVALS; COORDINATION

SECTION 11.1. Permits and Approvals. Since the Owner is the State of Missouri, municipal or political subdivision ordinances, zoning ordinances, construction codes and other like ordinances are not applicable to construction on Owner's property, and ESCO will not be required to submit drawings and specifications to any municipal or political subdivision authority, obtain construction permits or any other licenses or permits from or submit to inspections by any municipality or political subdivision relating to the construction of this project. All permits or licenses required by municipality or political subdivision for operation on property not belonging to Owner shall be obtained by and paid for by ESCO. Each ESCO shall comply with all applicable laws, ordinances, rules and regulations, as it is not the intent of the Owner to arbitrarily dismiss the authorities identified above. Owner shall use its best efforts to assist ESCO in obtaining all necessary permits and approvals for installation of the Equipment. In no event shall Owner, however, be responsible for payment of any permit or license fees.

The ESCO's design shall be based on all applicable codes, such that the equipment and the operation of the equipment by ESCO shall upon acceptance conform to all federal, state and local code requirements. ESCO shall furnish copies of each permit or license which is required to perform the work to the Owner before the ESCO commences the portion of the work requiring such permit or license.

As directed by Owner, design documentation will be submitted to Owner for review. The documentation will include, but not limited to, drawings and specifications which allow the Owner to quantify the work.

As deemed necessary by Owner, design documentation will be forwarded by Owner for the appropriate design and code review. Owner agrees that the total review process will not be longer than 20 work days.

SECTION 11.2. Coordination During Installation. Owner and ESCO shall coordinate the activities of ESCO's equipment installers with those of the Owner, its employees, and agents. ESCO shall not commit or permit any act, which will interfere with the performance of business activities conducted by the Owner or its employees without prior written approval of the Owner.

SECTION 12. CONSTRUCTION AND INSTALLATION BY ESCO

SECTION 12.1. Construction Schedule. Construction and equipment installation shall proceed in accordance with the construction schedule approved by Owner and attached hereto as **Schedule G (Construction and Installation Schedule)**.

SECTION 12.2 ESCO's Duty of Proper Installation. All services called for by this Agreement which constitute the "practice of architecture" or the "practice of engineering", shall be performed by properly qualified and licensed professionals employed by ESCO or agents of ESCO and shall be performed in

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accordance with applicable law. ESCO shall perform all tasks/phases under this Agreement, including construction, and shall install the Equipment in such a manner so as not to harm the structural integrity of the buildings or their operating systems and so as to conform to the standards set forth in **Schedule I (Standards of Comfort)** and **Schedule G (Construction and Installation Schedule)**. ESCO shall repair and restore to its original condition any area of damage caused by ESCO's performance under this Agreement. Owner reserves the right to review the work performed by ESCO and to direct ESCO to take certain corrective action if, in the opinion of Owner, the structural integrity of the Premises or its operating system is or will be harmed. All costs associated with such corrective action caused by ESCO's breach of its obligations under this Agreement shall be borne by ESCO. All construction and installation by ESCO shall be in compliance with applicable building, fire and other codes in existence as of the date of this contract.

SECTION 12.3 Subcontracts. As used in this Agreement, the term "subcontractor" means a person or entity supplying both labor and materials, or labor only, for installation or maintenance related to the Equipment. Each and every subcontractor shall be properly qualified to perform the work that is the subject of such subcontract. Within twenty (20) work days following execution of this Agreement, ESCO shall provide the Owner a complete list of all subcontractors. The ESCO shall not use any subcontractor the Owner objects to in writing as being unacceptable within five (5) work days after receiving ESCO's list. The ESCO agrees to bind each subcontractor to the terms of **Sections 9, 10, 11, 12, 13, 16 and 20 of this Agreement**. Nothing in this Agreement or otherwise shall create any contractual relationship whatsoever between any subcontractor and the Owner. The ESCO shall not grant or allow any lien or security interest for labor or material or otherwise on the Equipment, the Premises or other property owned by the Owner.

SECTION 12.4. ESCO's Superintendence and Supervision. ESCO shall provide, during the progress of the installation and testing, a competent superintendent and any necessary assistants. The superintendent shall represent the ESCO and all directions or notices given to him or her shall be binding on the ESCO.

The superintendent shall give efficient supervision to the work, using his or her best skill and attention. The superintendent shall see that the work is carried out in accordance with this Agreement and in a thorough first-class manner in every respect. The superintendent shall establish all lines, level, and marks, if any, necessary to facilitate the operations of all concerned in such installation.

SECTION 12.5. ESCO Responsibility. ESCO shall remain responsible for the professional and technical accuracy of all services performed, whether performed by the ESCO or its subcontractors or others on its behalf, throughout the term of this Agreement.

SECTION 12.6. Open Book Pricing. Open book pricing will be required, such that the ESCO will fully disclose all costs. ESCO will maintain cost accounting records on authorized work performed documenting actual costs for labor and material, or other basis agreed to by the Owner. ESCO will afford Owner access to these records and preserve them for a period of three (3) years after final payment. Costs will be evaluated through price analysis to compare costs with reasonable criteria such as established catalog and market prices or historical prices. The pricing methodology and individual cost markups disclosed during preliminary contract negotiations will be expected to be applied in costs presented in any subsequent technical audit or performance contract, providing the scope and size of the project remain the same as assumed when markups were disclosed.

SECTION 12.7. Use of Stated Markups.

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In establishing the Contract Sum the ESCO has used the markups for overhead and profit as disclosed in the **ESCO Proposal (Appendix B)** and applied to the labor and material costs as shown in **Schedule O (Annual Installment Payment Schedule)**. It also has also provided a contingency budget equal to < % of labor and materials or \$ value>. The Contract Sum shall be adjusted based on the actual costs of labor and materials to the ESCO multiplied by the markups agreed to by the ESCO, but in no event shall the Contract Sum be increased. In the event it is possible to reduce the Contract Sum because the contingency budget is not spent or the actual labor and material costs are less than budgeted, the Owner can, at its sole option, increase the Scope of Work to include additional equipment such that the original Contract Sum is reached. If the Owner declines to increase the scope of Work, at its sole option, the Contract Sum shall be reduced to an amount consistent with the pricing using the stated markups.

SECTION 12.8. Performance by ESCO. ESCO shall perform all tasks/phases under the Contract, including construction, and install the Equipment in such a manner so as not to harm the structural integrity of the buildings or their operating systems and so as to conform to the standards set forth in **Schedule I (Standards of Comfort)** and the construction schedule specified in **Schedule G (Construction and Installation Schedule)**. ESCO shall repair and restore to its original condition any area of damage caused by ESCO's performance under this Contract. The Owner reserves the right to review the work performed by ESCO and to direct ESCO to take certain corrective action if, in the opinion of the Owner, the structural integrity of the Premises or its operating system is or will be harmed. All costs associated with such corrective action to damage caused by ESCO's performance of the work shall be borne by ESCO.

ESCO shall remain responsible for the professional and technical accuracy of all services performed, whether by the ESCO or its subcontractors or others on its behalf, throughout the term of this Contract.

SECTION 13. TRAINING AND FOLLOW-UP ACTIVITIES BY ESCO

SECTION 13.1 Training. The ESCO shall conduct the training program described in **Schedule M (ESCO's Training Responsibilities)**. Appropriate training must be completed prior to acceptance of the Equipment installation. The ESCO shall provide ongoing training whenever needed with respect to updated or altered Equipment, including upgraded software. Such training shall be provided at no charge to the Owner.

SECTION 13.2 Energy Star Application. The ESCO shall conduct an Energy Star benchmarking study for each facility and apply for an Energy Star Label on behalf of Owner for all buildings that meet or exceed the necessary requirements for the Energy Star Label.

SECTION 13.3 Emissions Reductions Documentation and Reporting. The ESCO shall include emissions reductions quantities in each annual report and advise the Owner on opportunities to achieve monetary benefit from such credits.

SECTION 14. OWNERSHIP

SECTION 14.1. Ownership of Certain Proprietary Property Rights. Owner shall not, by virtue of this Agreement, acquire any ownership interest in any formulas, patterns, devices, secret inventions or processes, copyrights, patents, other intellectual or proprietary rights, or similar items of property which are or may be used in connection with the Equipment. Owner shall, however, have a nonexclusive license to utilize all such intellectual or proprietary rights in connection with its use of the Equipment under this Agreement. The ESCO hereby grants to the Owner a perpetual, irrevocable,

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royalty-free license to any and all software or other intellectual property or proprietary rights necessary for the Owner to continue to operate, maintain, and repair the Equipment in a manner that will yield maximal energy consumption reductions. This license shall continue subsequent to any termination or expiration of this Agreement other than termination due to breach by Owner.

SECTION 14.2. Ownership of Documents. All drawings, reports and materials prepared by the ESCO specifically in performance of this contract shall become the property of Owner. Unless waived by the Owner in writing, within twenty (20) work days following the Performance Commencement Date, ESCO shall provide the Owner as-built record drawings of the Equipment installation and all specifications therefore. "Drawings" shall include one set of corrected prints, one set of record drawing 4 mil mylars and one set electronic files in compliance with Owner's CAD standards **Schedule P (Computer Aided Design Drafting Guidelines and Drawings Submittals)**. Additional documents will be provided as a contract change.

SECTION 14.3. Ownership of Existing Equipment. Ownership of the equipment and materials existing at the Premises at the time of execution of this Agreement shall remain the property of Owner even if it is replaced or its operation made unnecessary by work performed by ESCO pursuant to this Agreement. If applicable, ESCO shall advise the Owner in writing of all equipment and materials to be replaced at the Premises and the Owner shall within fifteen (15) days designate in writing to the ESCO which equipment and materials should not be disposed of off-site by the ESCO. It is understood and agreed to by both Parties that the Owner shall be responsible for and designate the location and storage for any equipment and materials that should not be disposed of off-site. Except as may be otherwise provided in this Agreement, the ESCO shall be responsible for the disposal of all equipment and materials designated by the Owner as disposable off-site in accordance with all applicable laws and regulations regarding such disposal.

SECTION 14.4. Ownership of Measurement and Verification Equipment. Owner agrees to provide rent-free space for the location of equipment required to provide the ongoing measurement of energy and water savings (the "Metering Equipment"). If required, Owner shall provide and maintain a non-dedicated telephone line to facilitate remote monitoring of the Equipment. Owner shall not by virtue of this Agreement, acquire any interest in any formulas, patterns, devices, secret inventions or processes, copyrights, patents, other intellectual or proprietary rights, or similar items of property which are or may be used in connection with the verification of savings by ESCO. ESCO shall insure such Metering Equipment at its own expense and Owner shall have no liability for such Metering Equipment except in the event of damage arising from the fault of the Owner.

SECTION 15. LOCATION AND ACCESS

SECTION 15.1. ESCO Access. ESCO acknowledges that there exists sufficient space on the Premises for the installation and operation of the Equipment. Owner shall take reasonable steps to protect such Equipment from harm, theft and misuse during the term of this Agreement. Owner shall provide access to the Premises for ESCO to perform any function related to this Agreement during regular business hours, or such other reasonable hours as may be requested by ESCO and acceptable to the Owner. ESCO shall be granted immediate access to make emergency repairs or corrections as it may, in its discretion, determine are needed. ESCO's access to the Premises to make emergency repairs or corrections as it may determine are needed shall not be unreasonably restricted by Owner. ESCO shall immediately notify the Owner when emergency action is taken and follow up with written notice with three (3) work days specifying the action taken, the reasons therefore, and the impact upon the Premises, if any.

SECTION 16. EQUIPMENT SERVICE

SECTION 16.1. Actions by ESCO.

During the Warranty Period, ESCO shall provide all service, repairs, and adjustments to the Equipment installed under terms of this Agreement pursuant to **Schedule J (ESCO's Maintenance Responsibilities)**. Owner shall incur no cost for Equipment service, repairs, and adjustments, except as set forth in **Schedule D (ESCO Monitoring, Maintenance and Service Agreement)**. Thereafter, Owner shall be responsible for and shall bear all costs associated with service, repairs, and adjustments to the Equipment.

SECTION 16.2. Malfunctions and Emergencies. Owner shall use its best efforts to notify the ESCO or its designated subcontractor within twenty-four (24) hours after the Owner's actual knowledge and occurrence of:

- (i) any malfunction in the operation of the Equipment or any preexisting energy related equipment that might materially impact upon the savings or savings guarantee,
- (ii) any interruption or alteration to the energy supply to the Premises, or
- (iii) any alteration or modification in any energy-related equipment or its operation.

Where Owner exercises due diligence in attempting to assess the existence of a malfunction, interruption, or alteration it shall be deemed not at fault in failing to correctly identify a such conditions as having a material impact upon the savings. Owner shall notify ESCO within twenty-four (24) hours upon its having actual knowledge of any emergency condition affecting the Equipment. If such malfunction, interruption, or alteration occurs during the Warranty Period, ESCO shall respond to any such notice within twenty-four (24) hours and shall promptly thereafter proceed with corrective measures. Any telephonic notice of such conditions by Owner shall be followed within three business days by written notice to ESCO from Owner. If Owner unreasonably delays in so notifying ESCO of a malfunction or emergency, and the malfunction or emergency is not otherwise corrected or remedied, ESCO may charge Owner for its loss, due to the delay, associated with the guaranteed savings under this Agreement for the particular time period, provided that ESCO is able to show the direct causal connection between the delay and the loss.

The ESCO will provide a written record of all service work performed. This record will indicate the reason for the service, description of the problem and the corrective action performed.

SECTION 16.3. Actions by Owner. During the term of this Agreement, Owner shall not move, remove, modify, alter, or change in any way the Equipment or any part thereof without the prior written approval of ESCO except as set forth in **Schedule K (Owner's Maintenance Responsibilities)**. Notwithstanding the foregoing, Owner may take reasonable steps to protect the Equipment if, due to an emergency, it is not possible or reasonable to notify ESCO before taking any such actions. In the event of such an emergency, Owner shall take reasonable steps to protect the Equipment from damage or injury. Owner agrees to maintain the Premises in good repair and to protect and preserve all portions thereof, which may in any way affect the operation or maintenance of the Equipment, all in accordance with the same standard of care the Owner applies to the Premises generally, that of a reasonably prudent government owner.

SECTION 17. STANDARDS OF COMFORT

SECTION 17.1 Standard of Comfort During the term of this Agreement, ESCO will maintain and operate the Equipment in a manner that will provide the standards of heating, cooling, hot water, lighting and other systems as described in **Schedule I (Standards of Comfort)**.

SECTION 18. MATERIAL CHANGES

SECTION 18.1. Material Change Defined: A Material Change shall include any change in or to the Premises, whether structural, operational or otherwise in nature which reasonably could be expected, in the judgment of the Owner, to increase or decrease annual energy consumption in accordance with the provisions and procedures set forth in **Schedule E (Baseline Energy Consumption)** and **Schedule F (Savings Measurement and Calculation Formulae; Methodology to Adjust Baseline)** by at least five (5) % after adjustments for climatic variations. Actions by the Owner that may result in a Material Change include but are not limited to the following:

- (i) manner of use of the Premises by the Owner; or
- (ii) hours of operation for the Premises or for any equipment or energy using systems operating at the Premises; or
- (iii) permanent changes in the comfort and service parameters set forth in **Schedule I (Standards of Comfort)**; or
- (iv) occupancy of the Premises; or
- (v) structure of the Premises; or
- (vi) types and quantities of equipment used at the Premises or
- (vii) modification, renovation or construction at the Premises; or
- (viii) the Owner's failure to provide maintenance of and repairs to the Equipment in accordance with **Schedule K (Owner's Maintenance Responsibilities)**; or
- (ix) casualty or condemnation of the Premises or Equipment, or
- (x) changes in utility provider or utility rate classification, or
- (xi) any other conditions other than climate affecting energy or water use at the Premises.

SECTION 18.2. Reported Material Changes; Notice by Owner. The Owner shall use its best efforts to deliver to the ESCO a written notice describing all actual or proposed Material Changes in the Premises or in the operations of the Premises at least 21 days before any actual or proposed Material Change is implemented or as soon as is practicable after an emergency or other unplanned event. Notice to the ESCO of Material Changes which result because of a bona fide emergency or other situation which precludes advance notification shall be deemed sufficient if given by the Owner within twenty-four (24) hours after having actual knowledge that the event constituting the Material Change occurred or was discovered by the Owner to have occurred.

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SECTION 18.3. Unreported Material Change. In the absence of any Material Changes in the Premises or in their operations, the baseline energy consumption as set forth in **Schedule E (Baseline Energy Consumption)** should not change from year to year after adjustments for changes in climatic conditions. Therefore, if energy and water use for any month is more than five (5) % or more during any month from the projected energy usage for that month, after adjustments for changes in climatic conditions then such deviation shall be deemed to have resulted from a Material Change, except where an increase is due to Equipment malfunction, malfunction of Premises systems, subsystems or components attributable to the Equipment, faulty repair or other negligence or breach of contract by ESCO. In the event an unreported Material Change is identified according to this Section 19.3, the ESCO shall attempt to identify the Material Change and report its findings to the Owner in a timely manner. The ESCO and Owner shall determine what, if any, adjustments to the baseline will be made in accordance with the provisions set forth in **Schedule F (Savings Measurement and Calculation Formulae; Methodology to Adjust Baseline)** and **Schedule E (Baseline Energy Consumption)**. If no Material Change is identified by the ESCO then no adjustments to the baseline will occur.

SECTION 19. INSURANCE AND BOND REQUIREMENTS

SECTION 19.1 -- BOND

- A. ESCO shall furnish a performance/payment bond in an amount equal to 100% of the contract price to guarantee faithful performance of his/her contract and 100% of the contract price to guarantee the payment of all persons performing labor on the project and furnishing materials in connection therewith under this contract as set forth in the standard form of performance and payment bond included in the contract documents. The surety on such bond shall be issued by a surety company authorized by the Missouri Department of Insurance to do business in the state of Missouri.
- B. All Performance/Payment Bonds furnished in response to this provision shall be provided by a bonding company with a rating of B+ or higher as established by A.M. Best Company, Inc. in their most recent publication.

SECTION 19.2 – INSURANCE

- A. The ESCO shall procure and maintain for the duration of the contract issued a policy or policies of insurance for the protection of both the ESCO and the Owner and their respective officers, officials, agents, consultants and employees. The Owner requires certification of insurance coverage from the ESCO prior to commencing work. Please carefully review the requirements outlined below.

It is highly recommended that you confer with your insurance broker/agent or other insurance company representative, prior to submitting your bid, to determine that availability and applicable cost, if any, of certificates, endorsements, coverages, and limits required.

B. Minimum Scope and Extent of Coverage

1. General Liability

Commercial General Liability, ISO coverage form number CG 00 01 ("occurrence" basis), or ISO coverage form number CG 00 02, or ISO equivalent.

If ISO equivalent or manuscript general liability coverage forms are used, minimum coverage will be as follows: Premises/Operations; Independent ESCO's; Products/Completed Operations; personal Injury; Broad Form Property Damage including Completed Operations; Broad Form Contractual Liability Coverage to include ESCO's obligations under Article 25 Indemnification and any other Special Hazards required by the work of the contract.

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2. Automobile Liability

Business Automobile Liability Insurance, ISO Coverage form number CA 00 01 covering automobile liability, code 1 "ANY AUTO".

3. Workers' Compensation and Employer's Liability

Statutory Workers' Compensation Insurance for Missouri and standard Employer's Liability Insurance, or the authorization to self-insure for such liability from the Missouri Division of Workers' Compensation.

4. Builder's Risk or Installation Floater Insurance

Insurance upon the work and all materials, equipment, supplies, temporary structures and similar items which may be incident to the performance of the work and located at or adjacent to the site, against loss or damage from fire and such other casualties as are included in extended coverage in broad "All Risk" form, including coverage for Flood and Earthquake, in an amount not less than the replacement cost of the work or this contract price, whichever is greater, with loss payable to ESCO and Owner as their respective interests may appear.

If Builder's Risk Reporting - Form of Endorsement is used, ESCO shall make all reports as required therein so as to keep in force an amount of insurance which will equal the replacement cost of the work, materials, equipment, supplies, temporary structures, and other property covered thereby; and if, as a result of ESCO's failure to make any such report, the amount of insurance so recoverable shall be less than such replacement cost, ESCO's interest in the proceeds of such insurance, if any, shall be subordinated to Owner's interest to the end that Owner may receive full reimbursement for its loss.

C. Minimum Limits of Insurance

1. General Liability

ESCO

\$2,000,000 combined single limit per occurrence for bodily injury, personal injury, and property damage

\$2,000,000 annual aggregate

2. Automobile Liability

\$2,000,000 combined single limit per occurrence for bodily injury and property damage

3. Workers' Compensation and Employers Liability

Workers' Compensation limits as required by applicable State Statutes (generally unlimited) and minimum of \$1,000,000 limit per accident for Employer's Liability.

General Liability and Automobile Liability insurance may be arranged under individual policies for the full limits required or by a combination of underlying policies with the balance provided by a form-following Excess or Umbrella Liability policy.

D. Deductibles and Self-Insured Retentions

All deductibles, co-payment clauses, and self-insured retentions must be declared to and approved by the Owner. The Owner reserves the right to request the reduction or elimination of unacceptable deductibles or self-insured retentions, as they would apply to the Owner, and their respective officers, officials, agents, consultants and employees. Alternatively, the Owner may request ESCO to procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

E. Other Insurance Provisions and Requirements

The respective insurance policies and coverage, as specified below, must contain, or be endorsed to contain the following conditions or provisions:

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1. All Coverages

Each insurance policy required by this section of the Contract shall contain a stipulation, endorsed if necessary, that the Director will receive a sixty (60) calendar day advance notice of any policy cancellation, unless a lesser period of notice is permitted under Missouri law. Ten (10) calendar days advance notice is required for policy cancellation due to non-payment of premium.

F. Insurer Qualifications and Acceptability

Insurance required hereunder shall be issued by an A.M. Best, "B+" rated, Class IX insurance company approved to conduct insurance business in the state of Missouri.

G. Verification of Insurance Coverage

Prior to Owner issuing a Notice to Proceed, the ESCO shall furnish the Owner with Certificate(s) of Insurance and with any applicable original endorsements evidencing the required insurance coverage. The insurance certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements received by the Owner are subject to review and approval by the Director. The Owner reserves the right to require certified copies of all required policies at any time. If the scope of this contract will exceed one (1) year - or, if any of ESCO's applicable insurance coverage expires prior to completion of the work or services required under this contract - the ESCO will provide a renewal or replacement certificate before continuing work or services hereunder.

SECTION 19.3 Professional Liability Insurance. ESCO shall maintain in full force and effect, at ESCO's expense, an Errors and Omissions or Professional Liability Insurance Policy in the minimum amount of 20% of the construction costs. The ESCO shall submit a Certificate of Insurance verifying said coverage upon execution of this Agreement and also any notices of renewals of such policy as they occur.

SECTION 19.4 Certificate and Endorsements. Prior to commencement of work under this Agreement, ESCO is required to provide Owner with complete current certificates of insurance evidencing the required coverages specified above and endorsements to the policies listing Owner as additional insured (other than for workers' compensation and professional liability). ESCO shall also immediately provide written notice to Owner of any notice of cancellation received from any insurer.

SECTION 19.5 Certificate of Insurance. Certificates of Insurance and insurance policies required of ESCO by this Agreement shall be subject to the following stipulations:

- (i) The clause entitled "Other Insurance Provisions" contained in any policy including the Owner as an additional named insured shall not apply to the Owner. Coverage will be limited to liability arising out of operations performed for the Owner by or on behalf of the ESCO, but only to the extent of damages caused by the negligence of the ESCO.
- (ii) The insurance companies issuing the policy or policies shall have no recourse against the Owner for payment of any premiums due or for any assessments under any form of any policy.
- (iii) Any and all deductibles or self-insured retentions contained in any insurance policy shall be assumed by and at the sole risk of the ESCO.
- (iv) If any of the said policies shall be or at any time become unsatisfactory to the Owner as to form or substance, or if a company issuing any such policy shall be or at any time become unsatisfactory to the Owner, the ESCO shall promptly obtain a new policy, submit the same to the Owner for approval and thereafter submit a Certificate of

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Insurance as hereinbefore provided. Upon failure of the ESCO to furnish, deliver and maintain such insurance as provided herein, this Agreement, in the sole discretion of the Owner may be immediately declared suspended, discontinued, or terminated. Failure of the ESCO in obtaining and/or maintaining any required insurance shall not relieve the ESCO from any liability under the Agreement, nor shall the insurance requirements be construed to conflict with the obligations of the ESCO concerning indemnification.

- (v) Prior to cancellation of or material change in any requisite policy, a minimum of ninety (90) days written notice shall be given to the Owner by means of registered mail, return receipt requested. All notices shall name the ESCO and identify the premises and Project Name.
- (vi) All requisite insurance shall be obtained from financially responsible insurance companies, licensed in the Owner and acceptable to the Owner.
- (vii) Receipt, review or acceptance by the Owner of all Insurance Policies, Certificates of Insurance and bonds required under this Agreement shall not be construed as a waiver or relieve the ESCO from its obligation to meet the insurance and bond requirements of the Agreement.

SECTION 20 CONDITIONS BEYOND CONTROL OF THE PARTIES

SECTION 20.1. If a party ("performing party") shall be unable to reasonably perform any of its obligations under this Contract due to acts of God, insurrections or riots, materials or labor shortages, or similar events, this Agreement shall at the other party's option remain in effect but the obligations of both parties shall be suspended until the said events shall have ended.

SECTION 21. EVENTS OF DEFAULT

SECTION 21.1. Events of Default by Owner. Each of the following events or conditions shall constitute an "Event of Default" by Owner:

- (i) any failure by Owner to pay ESCO any sum due hereunder for a service and maintenance period of more than thirty (30) calendar days after written notification by ESCO that Owner is delinquent in making payment;
- (ii) any other material failure by Owner to perform or comply with the terms and conditions of this Agreement, including breach of any covenant contained herein, provided that such failure continues for thirty (30) calendar days after notice to Owner demanding that such failures to perform be cured or if such cure cannot be effected in such thirty (30) calendar days, Owner shall be deemed to have cured default upon the commencement of a cure within such thirty (30) calendar days and diligent subsequent completion thereof;
- (iii) any representation or warranty furnished by Owner in this Agreement that was false or misleading in any material respect when made.

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SECTION 21.2. Events of Default by ESCO. Each of the following events or conditions shall constitute an "Event of Default" by ESCO:

- (i) the standards of comfort and service set forth in **Schedule I (Standards of Comfort)** are not provided due to failure of ESCO to properly design, install, maintain, repair or adjust the Equipment except that such failure, if corrected or cured within ten (10) work days after written notice by Owner to ESCO demanding that such failure be cured, shall be deemed cured for purposes of this Contract.
- (ii) any representation or warranty furnished by ESCO in this Contract is false or misleading in any material respect when made;
- (iii) failure to furnish and install the Equipment and make it ready for use within the time specified by this Contract as set forth in **Schedule A (Equipment to be Installed by ESCO)** and **Schedule G (Construction and Installation Schedule)**;
- (iv) provided that the operation of the facility is not adversely affected and provided that the standards of comfort in **Schedule I (Standards of Comfort)** are maintained, any failure by ESCO to perform or comply with the terms and conditions of this Agreement, including breach of any covenant contained herein except that such failure, if corrected or cured within twenty (20) work days after written notice to ESCO demanding that such failure to perform be cured, shall be deemed cured for purposes of this Agreement;
- (v) the filing of a bankruptcy petition whether by ESCO or its creditors against ESCO which proceeding shall not have been dismissed within 90 calendar days of its filing, or an involuntary assignment for the benefit of all creditors or the liquidation of ESCO.
- (vi) failure by the ESCO to pay any amount due, or perform any obligation under the terms of this Agreement.

SECTION 22. REMEDIES UPON DEFAULT

SECTION 22.1. Remedies upon Default by Owner. If an Event of Default by Owner occurs, ESCO may, without a waiver of other remedies that exist in law or equity:

- (i) exercise all remedies available at law or in equity or other appropriate proceedings including bringing an action or actions from time to time for recovery of amounts due and unpaid by Owner, and/or for damages which shall include all costs and expenses reasonably incurred, including reasonable attorney fees;
- (ii) terminate this Agreement.

SECTION 22.2. Remedies Upon Default by ESCO. In the Event of Default by ESCO, Owner may, without waiver of other remedies which exist in law or equity, exercise any and all remedies at law or equity, or institute other proceedings, including, without limitation, bringing an action or actions from time to time for specific performance, and/or for the recovery of damages, which shall include all costs and expenses reasonably incurred, including reasonable attorney fees. The Owner may also terminate this Agreement.

SECTION 23. ASSIGNMENT

SECTION 23.1. Assignment by ESCO.

- (i) The ESCO acknowledges that the Owner is induced to enter into this Agreement by, among other things, the professional qualifications of the ESCO. The ESCO agrees that except as provided below, neither this Agreement nor any right of obligations hereunder may be assigned in whole or in part to another firm, without the prior written approval of the Owner.
- (ii) Notwithstanding the foregoing, in the event of a sale, transfer, or reorganization of ESCO as an entity, ESCO shall have the right to assign all of its rights and delegate all of its duties under or pursuant to this Agreement without any prior consent or approval of Owner.
- (iii) The ESCO may, with prior written approval of the Owner, which consent shall not be unreasonably withheld, utilize sub-consultants, provided that any sub-consultant(s) shall fully comply with the terms of this Agreement. The provisions of Section 13.3 pertaining to subcontracts shall apply to any and all subcontract(s). Proposed sub-consultant(s) for other than installation shall be tendered to the Owner for approval of at least ten (10) work days prior to execution of any such subcontract. No such assignment shall relieve the ESCO of any obligation under this Agreement.

SECTION 24. REPRESENTATIONS AND WARRANTIES

SECTION 24.1 Each party warrants and represents to the other that:

- (i) it has all requisite power, authority, licenses, permits, and franchises, corporate or otherwise, to execute and deliver this Agreement and perform its obligations hereunder;
- (ii) its execution, delivery, and performance of this Agreement have been duly authorized by, or are in accordance with, its organic instruments, and this Agreement has been duly executed and delivered for it by the signatories so authorized and it constitutes its legal, valid, and binding obligation;
- (iii) its execution, delivery, and performance of this Agreement will not result in a breach or violation of, or constitute a default under any Agreement, lease or instrument to which it is a party or by which it or its properties may be bound or affected; or
- (iv) it has not received any notice, nor to the best of its knowledge is there pending or threatened any notice, of any violation of any applicable laws, ordinances, regulations, rules, decrees, awards, permits or orders which would materially and adversely affect its ability to perform hereunder.

SECTION 25. ADDITIONAL REPRESENTATIONS OF THE PARTIES.

SECTION 25.1. Additional Representations of the Parties. Owner hereby warrants, represents and promises that:

- (i) Owner is authorized under the laws of the State of Missouri to enter into this Agreement, each transaction contemplated hereby, and to perform all of its obligations under this Agreement.
- (ii) Owner has provided or shall provide timely to ESCO, all records relating to energy and water usage and energy-related maintenance of Premises requested by ESCO and the information set forth therein is, and all information in other records to be subsequently provided pursuant to this Agreement will be true and accurate in all material respects; and
- (iii) Owner has not entered into any prior leases, contracts or agreements with other persons or entities regarding the leasing or acquisition of water or energy efficiency equipment or the provision of energy management services for the Premises or with regard to servicing any of the energy related equipment located in the Premises that would encroach upon the scope of this contract. Owner shall provide ESCO with copies of any successor or additional leases of energy efficiency equipment and contracts for management or servicing of preexisting equipment at Premises that may be executed from time to time hereafter within seven days after execution thereof.
- (iv) The authorization, approval and execution of the Agreement and all other proceedings of Owner relating to the transactions contemplated thereby have been performed in accordance with all applicable open meeting, public records, public bidding and all other laws, rules and regulations of the State of Missouri.

SECTION 25.2. By ESCO. ESCO hereby warrants, represents and promises that:

- (i) before commencing performance of this Agreement:
 - (a) ESCO shall have become licensed or otherwise permitted to do business in the State of Missouri
 - (b) ESCO shall have provided proof and documentation of all required insurance and bonds pursuant to this Agreement.
- (ii) ESCO shall make available, upon reasonable request, documents relating to its performance under this Agreement, including contracts and subcontracts it shall enter into
- (iii) ESCO shall use sub-ESCO's who are qualified, licensed and bonded in this State to perform the work so subcontracted pursuant to the terms hereof;
- (iv) ESCO has all requisite authority to license the use of proprietary property, both tangible and intangible, contemplated by this Agreement;

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- (v) The Equipment will meet or exceed the Acceptance Testing Standards set forth in this Agreement.
- (vi) The Equipment is or will be compatible with all other Premises mechanical and electrical systems, subsystems, or components with which the Equipment interacts, and that, as installed, neither the Equipment nor such other systems, subsystems, or components will materially adversely affect each other as a direct or indirect result of Equipment installation or operation;
- (vii) That ESCO is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the Installation and perform its obligations under this Agreement.

**SECTION 26. WAIVER OF LIENS, PERFORMANCE BONDS,
LABOR AND MATERIAL PAYMENT BONDS**

SECTION 26.1 Missouri law does not provide any right of mechanics lien against public property. Although no right of lien exists, ESCO will obtain and furnish to Owner a Final Release of Payment form from each vendor, material man and laborer in the furnishing, installation and servicing of each piece of Equipment as additional protection against unpaid labor or materials. Notwithstanding anything in this Agreement to the contrary, payments hereunder will not commence until such creditors have been afforded notice and opportunity to stop such payments in accordance with the cited statute.

SECTION 27. COMPLIANCE WITH LAW AND STANDARD PRACTICES

SECTION 27.1 ESCO shall perform its obligations hereunder in compliance with any and all applicable federal, state, and local laws, rules, and regulations, in accordance with sound engineering and safety practices and in compliance with any and all reasonable rules of Owner relative to the Premises. ESCO shall be responsible for obtaining all governmental permits, consents, and authorizations as may be required to perform its obligations hereunder.

SECTION 28. NO WAIVER

SECTION 28.1 The failure of ESCO or Owner to insist upon the strict performance of the terms and conditions hereof shall not constitute or be construed as a waiver or relinquishment of either party's right to thereafter enforce the same in accordance with this Agreement in the event of a continuing or subsequent default on the part of ESCO or Owner.

SECTION 29. SEVERABILITY

SECTION 29.1 In the event that any clause or provision of this Agreement or any part thereof shall be declared invalid, void, or unenforceable by any court having jurisdiction, such invalidity shall not effect the validity or enforceability of the remaining portions of this Agreement unless the result would be manifestly inequitable or unconscionable or unlawful.

SECTION 30. COMPLETE AGREEMENT

SECTION 30.1 This Agreement, when executed, together with all Schedules attached hereto or to be attached hereto, as provided for by this Agreement shall constitute the entire Agreement between both parties and this Agreement may not be amended, modified, or terminated except by a written Agreement signed by the parties hereto.

SECTION 31. FURTHER DOCUMENTS

SECTION 31.1. The parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Agreement.

SECTION 32. APPLICABLE LAW

SECTION 32. This Agreement and the construction and enforceability thereof shall be interpreted under the laws of the State of Missouri.

SECTION 33. NOTICE AND CONSENT

SECTION 33.1. Any notice required or permitted hereunder shall be deemed sufficient if given in writing and sent by registered or certified mail, return receipt requested, postage prepaid, receipt obtained, to the address shown below or to such other persons or addresses as are specified by similar notice. Any consent required hereunder shall not be unreasonably withheld.

TO ESCO: <ESCO Name, Attention, Mailing address.>
< Include COPY TO: information for ESCO, if applicable.>

TO OWNER: Dave Mosby, Director

Facilities Management, Design and Construction Division
Room 730, Truman Building
301 W. High St.
P.O. Box 809
Jefferson City, Missouri 65102

SECTION 34. OWNER'S COMPLIANCE WITH CHECKLIST

SECTION 34.1. The parties further acknowledge and agree that said Energy and Cost Savings would not likely be obtained unless certain procedures and methods of operation designed for energy and water conservation shall be implemented, and followed by Owner on a regular and continuous basis.

SECTION 34.2. Owner agrees that it shall adhere to, follow and implement the energy conservation procedures and methods of operation to be set forth on **Schedule K (Owner's Maintenance Responsibilities)**, to be attached hereto and made a part hereof after Owner's approval.

SECTION 34.3. Owner agrees that ESCO shall have the right once a month, with prior notice, to inspect Premises to determine if Owner is complying, and shall have complied with its obligations as

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set forth above in Section 35.2. For the purpose of determining Owner's said compliance, the checklist to be set forth at **Schedule L (Facility Maintenance Checklist)** as completed and recorded by ESCO during its monthly inspections, shall be used to measure and record Owner's said compliance. Owner shall make the Premises available to ESCO for and during each monthly inspection, and shall have the right to witness each inspection and ESCO's recordation on the checklist. Owner may complete its own checklist at the same time.

SECTION 35. HEADINGS

SECTION 35.1 Headings and subtitles used throughout this Agreement are for the purpose of convenience only, and no heading or subtitle shall modify or be used to interpret the text of any section.

SECTION 36. OWNER LIABILITY EXPOSURE

SECTION 36.1 Notwithstanding any other provision of this Agreement to the contrary, no term of condition of this Agreement shall be construed or interpreted as a waiver of any provision of the Missouri's Sovereign Immunity.

SECTION 37. SPECIAL PROVISIONS

SECTION 37.1. Fund Availability. Financial obligations of the State of Missouri payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

SECTION 37.2. Indemnification. The ESCO shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by the ESCO, or its employees, agents, sub-ESCO's, or assignees pursuant to the terms of this contract.

SECTION 37.3. Independent ESCO. The ESCO shall perform its duties as an independent ESCO and not as an employee. Neither the ESCO nor any agent or employee of the ESCO shall be deemed to be an agent or employee of the State. ESCO shall pay when due all required employment taxes, income tax and local tax on any monies paid by the State pursuant to this contract. ESCO acknowledges that the ESCO and its employees are not entitled to unemployment insurance benefits unless the ESCO or third party provides such coverage and that the State does not pay for or otherwise provide such coverage. ESCO shall have no authorization, express or implied, to bind the State to any agreements, liability, or understanding except as expressly set forth herein. ESCO shall provide and keep in force workers' compensation (and provide proof of such insurance when requested by the State) and unemployment compensation insurance in the amounts required by law, and shall be solely responsible for the acts of the ESCO, its employees and agents.

SECTION 37.4. Non-Discrimination. The ESCO agrees to comply with the letter and the spirit of all applicable state and federal laws respecting discrimination and unfair employment practices.

SECTION 37.5 Choice of Law. The laws of the State of Missouri and rules and regulations issued pursuant thereto shall be applied in the interpretation, execution, and enforcement of this contract.

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Any provision of this contract, whether or not incorporated herein by reference, which provides for arbitration by any extra-judicial body or person or which is otherwise in conflict with said laws, rules, and regulations shall be considered null and void. Nothing contained in any provision incorporated herein by reference which purports to negate this or any other special provision in whole or in part shall be valid or enforceable or available in any action at law whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision will not invalidate the remainder of this contract to the extent that the contract is capable of execution.

At all times during the performance of this contract, the ESCO shall strictly adhere to all applicable federal and State laws, rules, and regulations that have been or may hereafter be established.

SECTION 38. FISCAL FUNDING

(NOTE: This section may be deleted if the Owner establishes a Master Lease contract.)

SECTION 38.1 As prescribed by State of Missouri, it is understood and agreed this lease is dependent upon the continuing availability of funds beyond the term of the State's current fiscal period ending upon the next succeeding June 30, as financial obligations of the State of Missouri payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available. Further, the parties recognize that the act of appropriation is a legislative act, and the Lessee hereby covenants to take such action as is necessary under the laws applicable to the Lessee to timely and properly budget for, request of and seek and pursue appropriation of funds of the Legislature of the State of Missouri which will permit Lessee to make all payments required under this lease during the period to which such appropriation shall apply. In the event there shall be no funds made available, this lease shall terminate at the end of the then current fiscal year, with no penalty or additional cost as a result thereof to the Lessee.

SECTION 38.2 To make certain the understanding of the parties because this lease will extend beyond the current fiscal year, Lessee and Lessor understand and intend that the obligation of the Lessee to pay the monthly rental hereunder constitutes a current expense of the Lessee payable exclusively from Lessee's funds and shall not in any way be construed to be a general obligation indebtedness of the State of Missouri or any agency or department thereof within the meaning of any provision or constitutional or statutory limitation or requirement applicable to the State concerning the creation of indebtedness. Neither the Lessee, nor the Lessor on its behalf, has pledged the full faith and credit of the State, or any agency or department thereof to the payment of the charges hereunder, and this lease shall not directly or contingently obligate the State or any agency or department thereof to apply money from, or levy or pledge any form of taxation to, the payment of the annual rental charges.

SECTION 38.3 With such limitations in mind, Lessee contracts to lease the Premises herein before described and has reason to believe that sufficient funds will be available for the full term of this lease. Where, for reasons beyond Lessee's control, Lessee's funding entity does not allocate funds for any fiscal period beyond the one in which this lease is entered into, or does not allocate funds to continue this lease from the then current fiscal period, such failure to obtain funds not resulting from any act or failure to act on the part of Lessee, Lessee will not then be obligated to make the payments remaining beyond Lessee's then current fiscal period. In such event, Lessee shall notify Lessor of such non-allocation of funds by sending written notice thereof to the Lessor forty-five (45) days prior to the effective date of termination.

SECTION 38.4 The parties hereto further understand and agree that the only funds that have or may be so appropriated and available for payment under this lease in any one particular fiscal year are for

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the purpose and in an amount sufficient only to pay the rental charges. Therefore, notwithstanding anything herein to the contrary, the payment by the Lessee of any other charges, liabilities, costs, guarantees, waivers, and any awards thereon of any kind pursuant to this lease against Lessee are contingent upon funds for such purpose(s) being appropriated, budgeted and otherwise made available through the said State of Missouri legislature process.

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THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

ESCO:

OWNER:

By _____
Legal Name of Contracting Entity

Dave Mosby, Director
Facilities Management, Design and
Construction Division

Social Security Number or FEIN

Signature of Authorized Officer

Print Name & Title of Authorized Officer

CORPORATIONS:
(A corporate seal or attestation is required.)

Attest (Seal) By _____
(Corporate Secretary or Equivalent, or Town/City/County Clerk)

ATTACHMENT I: Schedules, Exhibits, Appendices

SECTION 39. SCHEDULES AND EXHIBITS

The following Schedules and Exhibits are attached hereto (or will be, as provided in this Agreement) and are made a part of this Agreement by reference.

SECTION 39.1 Schedules

Schedule A	Equipment to be Installed by ESCO
Schedule B	Description of Premises; Pre-Existing Equipment Inventory
Schedule C	Energy and Cost Savings Guarantee
Schedule D	ESCO Monitoring, Maintenance and Service Agreement
Schedule E	Baseline Energy Consumption
Schedule F	Savings Measurement and Calculation Formulae; Methodology to Adjust Baseline
Schedule G	Construction and Installation Schedule
Schedule H	Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment
Schedule I	Standards of Comfort
Schedule J	ESCO's Maintenance Responsibilities
Schedule K	Owner's Maintenance Responsibilities
Schedule L	Facility Maintenance Checklist
Schedule M	ESCO's Training Responsibilities
Schedule N	General Conditions <i><for State of Missouri agencies, or others as applicable></i>
Schedule O	Annual Installment Payment Schedule
Schedule P	Computer Aided Design Drafting Guidelines and Drawing Submittals

SECTION 39.2 Exhibits

Exhibit I	Payment and Performance Bond
Exhibit II	Certificate of Acceptance—Technical Energy Audit
Exhibit III	Certificate of Acceptance—Installed Equipment
Exhibit IV	Operations and Maintenance Manuals
Exhibit V	Equipment Warranties
Exhibit VI	Form of Letter of Credit

SECTION 39.3 Appendices

Appendix A	RFP for ESCO Solicitation
Appendix B	ESCO Proposal
Appendix C	Technical Energy Audit

SCHEDULE A. EQUIPMENT TO BE INSTALLED BY ESCO

< Section Overview & Comments: This schedule will be furnished by the ESCO based on the final Technical Energy Audit. It should specify all of the newly installed equipment including manufacturer, quantity, location and warranties (you can also have a separate schedule for warranties). The information should be provided in sufficient detail by building or area of building so that the Owner can verify the number of units installed under the contract. This is particularly important for a lighting retrofit and is used as the basis for making adjustments to the Contract Sum if the number of fixtures actually retrofit is different than the number estimated. Detailed specifications of major pieces of equipment such as boilers, chillers, motors should be provided. A detailed points list of any energy management control system should be provided along with the major control strategies being implemented. This schedule should also describe any modifications that may have to be made to existing equipment, if applicable. Note: Construction drawings and specifications should be included here. >

SCHEDULE B. DESCRIPTION OF PREMISES; PRE-EXISTING EQUIPMENT INVENTORY

<Note to Owner: Schedule B: This schedule is based on the final Technical Energy Audit. It contains basic information about the condition of the premises at the time of contract execution. Such information would include facility square footage, building construction, use, occupancy, hours of operation etc., and any special conditions that may exist.

The inventory is important to include for the purpose of identifying what equipment was in place and how it was configured at the time of contract execution. This schedule is important to the accurate establishment of baseline, savings measurement and may need to be referred to in the later years of the contract. It is critical that if M&V option C of the International Performance Monitoring and Verification protocol is used for establishing the savings, then a detailed list of the existing energy consuming equipment of the facility be documented in great detail. If Option A or B is used, then the pre-existing equipment inventory can be eliminated.>

SCHEDULE C: ENERGY AND COST SAVINGS GUARANTEE

< Section Overview & Comments: This schedule should fully describe all provisions and conditions of the energy saving guarantee provided by the ESCO. The guarantee should be defined in units of energy to be saved for the duration of the contract term and provide a mechanism to calculate dollar savings. Reference to the annual reconciliation of achieved vs. guaranteed savings should be included (there is also language in the body of the contract regarding annual reconciliation See Section 4.2). Guidelines for the guarantee were established in the RFP, so ensure compliance with RFP intent.>

< Section Overview & Comments: This schedule should contain the projected energy savings in units for each year of the contract. Often these projections are broken down on a measure-by-measure basis, although some measures may be aggregated into general categories such as lighting or HVAC. If there are several buildings involved in the project, this schedule should contain projections for each facility, even though they may all be covered under a single guarantee.>

SCHEDULE D: ESCO MONITORING, MAINTENANCE AND SERVICE AGREEMENT

< Section Overview & Comments: This should contain the amount and frequency of any payments that may be made to the ESCO for maintenance, monitoring or other services negotiated as part of the contract. It should contain information about how the compensation is calculated (e.g. a percentage of savings above and beyond the guarantee, flat fee etc.), and if an annual inflation index is to be used to escalate fees over the duration of the contract term. An hourly fee structure can also be included to cover ESCO costs for any services provided beyond the scope agreed to at the time of contract execution.>

SCHEDULE E: BASELINE ENERGY CONSUMPTION

<Section Overview & Comments: The baseline energy consumption is the "yardstick" by which all savings achieved by the installed project will be measured. The methodology and all supporting documentation used to calculate the baseline should be in this schedule including unit consumption and current utility rates for each fuel type. This schedule may also include baseline documentation regarding other cost savings such as material savings (e.g. bulbs, ballast, filters, chemicals etc.), and cost savings associated with the elimination of outside maintenance contracts. >

<For each site or project, the baseline and post-installation energy use will usually be defined using metering, billing analysis and/or engineering calculations (including computer simulations) either individually or in combination. In addition, values for certain factors that affect energy use and savings that are beyond the ESCO's control may be stipulated using historical data, analyses and/or results of spot or short-term metering. The owner or the ESCO can define baseline conditions. If the owner defines the baseline, the ESCO will have the opportunity to verify it. If the baseline is defined by the ESCO, the owner will have the opportunity to verify.>

<Baseline physical conditions (equipment inventory and conditions, occupancy, nameplate data, energy consumption rate, control strategies, etc.) are typically determined through well-documented audits, surveys, inspections and/or spot or short-term metering. This documentation will define the baseline for calculating savings and document baseline conditions in case future changes require baseline energy use adjustments.>

SCHEDULE F: SAVINGS MEASUREMENT AND CALCULATION FORMULAE; METHODOLOGY TO ADJUST BASELINE

< Section Overview & Comments: This schedule contains a description of the energy savings measurement, monitoring and calculation procedures used to verify and compute the savings performance of the installed equipment will be contained in this schedule. The Owner should consider requiring the ESCO to use the International Performance Monitoring and Verification Protocol 2000 as the basis of the savings calculation methodology. This protocol provides four options for M&V and covers all possible energy and water efficiency measures and is the accepted international standard for M&V of performance contracts.

This calculation will include a method to compare the level of energy that would have been consumed without the project (referred to as the "Baseline") with what amount of energy was actually consumed during a specific time period (monthly, quarterly, etc.). All methods of measuring savings including engineered calculations, metering, equipment run times, pre- and post-installation measurements, etc. should be explicitly described for all equipment is installed.

A clear methodology for converting energy savings into energy cost savings should be provided. The utility rates to be used for the baseline and actual energy costs should be defined. How the calculations are affected by rising or lowering utility rates should be clearly described.

Periodically (typically on an annual basis), the baseline will be adjusted to account for the prevailing conditions (e.g., weather, billing days, occupancy, etc.) during the measurement period. All methodologies used to account for any adjustments to the baseline needs to be clearly defined in this schedule.>

Examples of baseline adjustments include: change in the amount of space being air conditioned, changes in auxiliary systems (towers, pumps, etc.), and changes in occupancy or schedule. For example, if a chiller retrofit was completed in a building with 100,000 square feet of conditioned space and during the contract term the conditioned space is reduced to 75,000 square feet, post-installation energy use would be lower making savings higher. If there are no records of the amount of originally conditioned space, the baseline could not be adjusted. Baseline adjustments for issues such as changes in production shifts, facility closures, adding new wings or loads (such as computer labs) require a conceptual approach versus a method to cover each eventuality. Clearly predictable annual variations are usually handled through established procedures for each identified factor in the savings formulas. Permanent changes, such as changes in square footage, are handled through agreement clauses that allow predictable or expected changes and/or through a "re-open" clause that allows either party to renegotiate the baseline.>

<A Facility Changes Checklist or other method may be provided by the ESCO for the Owner to notify the ESCO of any changes in the facility that could have an impact on energy use (occupancy, new equipment, hours of use, etc.). This checklist is generally submitted on a monthly or quarterly basis.>

SCHEDULE G: CONSTRUCTION AND INSTALLATION SCHEDULE

< Section Overview & Comments: The timetables and milestones for project construction and installation should be contained in this schedule. Any penalties for late installation should also be documented here. Documentation of required insurance, sub-ESCO lists and any MBE/WBE required subcontracts can be included in this schedule or broken out into a separate schedule. NOTE: It is important that the construction/installation phase of the project (for example bonds and insurance) be treated in compliance with individual institutional requirements and the appropriate governing statutes. Since construction is just one component of the overall project, a separate construction contract may be desirable and in some cases necessary. The construction contract would then be referred to in the body of the contract and attached as an exhibit, appendix or other type of attachment. Another

approach would be to consolidate the appropriate construction language for inclusion in the body of the final contract. This will need to be decided as appropriate on a case-by-case basis.>

**SCHEDULE H:
SYSTEMS START-UP AND COMMISSIONING; OPERATING PARAMETERS OF
INSTALLED EQUIPMENT**

< Section Overview & Comments: This section should specify the performance testing procedures that will be used to start-up and commission the installed equipment and total system. The schedule also provides for the Owner to be notified of and have the right to be present during all commissioning procedures. This schedule should contain a provision for the documentation of the client's attendance at the various tests and acceptance of the ESCO's certification that the tests followed the specified procedures and met or exceed the expected results. Use of manufacturer's start up and performance sheets are required.

<The operating parameters should contain any specified parameters for the operation of the installed equipment such as temperature setbacks, equipment run times, load controlling specifications and other conditions for the operation of the equipment.>

SCHEDULE I: STANDARDS OF COMFORT

< Section Overview & Comments: The standards of comfort to be maintained for heating, cooling, lighting levels, hot water temperatures, humidity levels and/or any special conditions for occupied and unoccupied areas of the facility should be explicitly described in this schedule. >

SCHEDULE J: ESCO MAINTENANCE RESPONSIBILITIES

<Section Overview & Comments: A complete description of the ESCO's specific operations and maintenance responsibilities should be included in this schedule along with the time intervals for their performance of the stated O&M activities.>

SCHEDULE K: OWNER'S MAINTENANCE RESPONSIBILITIES

< Section Overview & Comments: This schedule describes the operations and maintenance responsibilities that may be assigned to facility staff as agreed to by both parties. In some instances it will contain no more than a description of routine O&M currently being performed on existing energy consuming equipment in the facility. In other cases, facility staff may be used to provide some maintenance on the new equipment installed under the performance contract, with the ESCO providing any specialized services as needed.>

SCHEDULE L: FACILITY MAINTENANCE CHECKLIST

<Section Overview & Comments: This checklist is a method by which the ESCO may record and track compliance with operations and maintenance procedures performed by facility personnel. The checklist typically specifies simple list of tasks and the corresponding schedule for the performance of the prescribed procedures. Facility staff will complete the checklist and forward it to the ESCO, usually on a monthly basis. (This checklist is a very useful tool for both the ESCO and Owner to verify that the required maintenance activities are being performed at the scheduled intervals).

SCHEDULE M: ESCO'S TRAINING RESPONSIBILITIES

<Section Overview & Comments: The description of the ESCO's training program or sessions for facility personnel should be contained in this schedule. The duration and frequency of the specified training should also be included. Any provisions for on-going training, commitments to train newly hired facility personnel, and training with respect to possible future equipment or software upgrades should also be described. Any fees associated with requests for training beyond what the ESCO is contractually bound to provide should also be specified.>

SCHEDULE N: GENERAL CONDITIONS

<Note to Owner: Schedule N: Where applicable, insert standard GENERAL CONDITIONS. Where referenced in Section 1.2, describe which of the paragraphs of the general conditions apply to this contract.>

SCHEDULE O: ANNUAL INSTALLMENT PAYMENT SCHEDULE

< Section Overview & Comments: This schedule contains the schedule of payments from the Owner to the ESCO.

SCHEDULE P: COMPUTER AIDED DESIGN DRAFTING GUIDELINES AND DRAWING SUBMITTALS

< Section Overview & Comments: This schedule contains the state of Missouri CADD requirements)>

EXHIBITS

EXHIBIT I PAYMENT AND PERFORMANCE BOND

EXHIBIT II CERTIFICATE OF ACCEPTANCE—TECHNICAL ENERGY AUDIT

EXHIBIT III CERTIFICATE OF ACCEPTANCE—INSTALLED EQUIPMENT

EXHIBIT IV OPERATIONS AND MAINTENANCE MANUALS

EXHIBIT V EQUIPMENT WARRANTIES

EXHIBIT VI FORM OF LETTER OF CREDIT

APPENDICES

APPENDIX A: RFP FOR ESCO SOLICITATION

APPENDIX B: ESCO PROPOSAL

APPENDIX C: TECHNICAL ENERGY AUDIT

ADDITIONAL OPTIONAL SCHEDULES

<The following schedules can be included as optional and included or combined with others or may be contained in the audit report, as desired. If any of the following schedules are used, references to these schedules may need to be added to the contract body.>

PRE-EXISTING SERVICE CONTRACTS

<Information regarding the scope and cost of pre-existing equipment service contracts should be located in this schedule. This gives both the client and ESCO information about how and when the existing equipment is being serviced. As well, if the ESCO is credited with any maintenance savings or is taking over any existing service contracts, the scopes and costs of such Contracts will be useful in tracking the performance of the ESCO in providing the required services and documenting any attributable cost savings.>

ENERGY SAVINGS PROJECTIONS

<This schedule should contain the projected energy savings in units for each year of the contract. Oftentimes these projections are broken down on a measure-by-measure basis although some measures may be aggregated into general categories such as lighting or HVAC. If there are several buildings involved in the project, this schedule should contain projections for each facility, even though they may all be covered under a single guarantee.>

PROJECTED FINANCIAL PERFORMANCE

<<Section Overview & Comments: This schedule should include, for information purposes only, a spreadsheet depiction of expected financial performance of the project for the entire contract term. It should clearly identify all financial components of the project including interest rates and financing costs to the leasing company, current fuel prices, any escalation rates to be applied (if an escalation rate is going to be agreed upon with the ESCO then it should be clearly documented in Schedule F), guaranteed savings, ESCO compensation figures (up front payment and monitoring fees), cash-flow projections and projected Net Present Value of any cumulative positive cash flow benefits to the building owner.>

FACILITY CHANGES CHECKLIST

<A "Facility Changes Checklist" or other method may be provided by the ESCO for the client to notify the ESCO of any changes in the facility that could have an impact on energy consumption (e.g. occupancy, new equipment acquisition, hours of use etc.). This checklist is generally submitted on a monthly basis or quarterly basis.>

CURRENT AND KNOWN CAPITAL PROJECTS AT FACILITY

<If there are any current or planned capital projects to be implemented in the facility, that information should be contained in this schedule. This information could prove to be very useful in the out-years of the contract to avoid potential disputes over long-term energy savings performance, overall facility energy consumption and costs..>